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GREGORY M. GRAY
*Clerk of the House*

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FOREWORD


First Regular Session, 2001

The First Regular Session of the 75th Legislature convened on January 10, 2001, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 7th day of November, 2000, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 14, 2001, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 14, 2001, at which time the Legislature adjourned sine die.

Bills totaling 1994 were introduced in the two houses during the session (1258 House and 736 Senate). The Legislature passed 330 bills, 160 House and 170 Senate.

The Governor vetoed five House bills (H. B. 2222, Penalties for the crime of littering; H. B. 2852, Relating to the consolidated public retirement board; H. B. 2954, Limiting absences of school principals from school duties to attend the principals academy; H. B. 3142, Requiring visible postings of addresses for mobile homes in certain mobile home parks; and H. B. 3216, Clarifying that the Legislature appropriates all accounts in the budget) and eight Senate bills (S. B. 18, Providing funding for benefits for eligible jockeys and dependents; S. B. 129, Relating to imposition of gasoline tax; S. B. 239, Modifying controlled substances monitoring act; S. B. 261, Reducing time for eligibility for expungement of criminal records of certain persons; S. B. 509, Establishing certification of electrical inspectors; S. B. 517, Relating to higher education revenue bonds generally; S. B. 554, Relating to extending time for filing information
returns for commission on fair taxation; and S. B. 646, Creating veterans skilled nursing facilities). The Legislature amended and again passed H. B. 2222, leaving a net total of 318 bills, 156 House and 162 Senate, which became law.

There were 157 Concurrent Resolutions introduced during the session, 93 House and 64 Senate, of which 45 House and 25 Senate were adopted. Twenty-five House Joint Resolutions and 13 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. The House introduced 34 House Resolutions, and the Senate introduced 47 Senate Resolutions, of which 25 House and 47 Senate were adopted.

The Senate failed to pass 53 House bills passed by the House, and 72 Senate bills failed passage by the House. Three bills died in conference: H. B. 2205, Regulating and allowing the playing of video lottery games in certain restricted access adult-only facilities; H. B. 3176, Allowing a description to replace multiple listings of “no candidate filed” on ballots; and S. B. 550, Relating to certain fees for motor vehicle inspections and stickers; posted notices.

*************

Second Extraordinary Session, 2000

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., September 12, 2000, contained nine items for consideration.

The Legislature passed 8 bills, all of which were House Bills. One concurrent resolution was adopted, H. C. R. 1, Providing for an adjournment of the Legislature until the 14th day of November, 2000, at 4:00 o’clock postmeridian, and for reconvening prior thereto by the Joint Committee on Rules of the Senate and House of Delegates. The Senate adopted four Senate Resolutions.

The Governor vetoed one bill, H. B. 208, Transfer of money from the governor’s civil contingent fund to legislative joint committee, fund 0175. One Senate bill failed passage by the House.

The Legislature adjourned the Extraordinary Session sine die on November 14, 2000.
First Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, April 15, 2001, contained eleven items for consideration.

The Legislature passed 12 bills, 5 House bills and 7 Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on April 23, 2001.

Second Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., May 7, 2001, contained two items for consideration.

The House and Senate each received an Executive Message setting forth revised estimates of revenue.

The Legislature adjourned the Extraordinary Session *sine die* 6:12 P.M. the same day.

Third Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., June 10, 2001, contained six items for consideration.

The Legislature passed 9 bills, 7 House bills and 2 Senate bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* June 10, 2001.
Fourth Extraordinary Session, 2001

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., August 8, 2001, contained two items for consideration.

The Legislature passed 3 bills, all of which were House Bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die 9:14 P.M. the same day.

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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Clerk — Gregory M. Gray, Charleston
Sergeant at Arms — Oce Smith, Fairmont
Doorkeeper — John A. Roberts, Hedgesville

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<td>Weston</td>
<td>72nd-75th</td>
</tr>
<tr>
<td>Thirty-ninth</td>
<td>Dale F. Riggs (R)</td>
<td>Buckhannon</td>
<td>69th-75th</td>
</tr>
<tr>
<td>Fortieth</td>
<td>Mary M. Poling (D)</td>
<td>Moatsville</td>
<td>75th</td>
</tr>
<tr>
<td>Forty-first</td>
<td>Frank T. Angotti, Jr. (D)</td>
<td>Clarksburg</td>
<td>74th-75th</td>
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<tr>
<td></td>
<td>Samuel J. Cann (D)</td>
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<td>72nd-75th</td>
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<td></td>
<td>Ron Fragale (D)</td>
<td>Clarksburg</td>
<td>70th-73rd; 75th</td>
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<td>Barbara A. Warner (D)</td>
<td>Bridgeport</td>
<td>69th-75th</td>
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<tr>
<td>Forty-second</td>
<td>Tom Coleman (D)</td>
<td>Grafton</td>
<td>73rd-75th</td>
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<td>Forty-third</td>
<td>Michael Caputo (D)</td>
<td>Fairmont</td>
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<td>A. James Manchin (D)</td>
<td>Farmington</td>
<td>50th; 74th-75th</td>
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<td>Paul Edward Prunty (D)</td>
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<td>61st; 63rd-65th; 67th-68th; 70th; 72nd-75th</td>
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<td>Forty-fourth</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>Appt. 5/98 served 7 months, 73rd; 75th</td>
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<td>Barbara Evans Fleischauer (D)</td>
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<td>Sheirl L. Fletcher (R)</td>
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<td>74th-75th</td>
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<td>Charlene J. Marshall (D)</td>
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<td>Forty-fifth</td>
<td>Larry A. Williams (D)</td>
<td>Tunnelton</td>
<td>75th</td>
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<td>Forty-sixth</td>
<td>Stanley E. Shaver (D)</td>
<td>Tunnelton</td>
<td>10/08/93, 71st; 72nd-75th</td>
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<tr>
<td>Forty-seventh</td>
<td>Harold K. Michael (D)</td>
<td>Moorefield</td>
<td>69th-75th</td>
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<td>Forty-eighth</td>
<td>Allen V. Evans (R)</td>
<td>Dorcas</td>
<td>70th-75th</td>
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<td>Forty-ninth</td>
<td>Robert A. Schadler (R)</td>
<td>Keyser</td>
<td>69th-71st; 74th-75th</td>
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<td>Jerry L. Mezzatista (D)</td>
<td>Romney</td>
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<td>Charles S. Trump IV (R)</td>
<td>Berkeley Springs</td>
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<td>Fifty-second</td>
<td>Vicki V. Douglas (D)</td>
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<td>Larry V. Faircloth (R)</td>
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<td>Fifty-fourth</td>
<td>John Overington (R)</td>
<td>Martinsburg</td>
<td>67th-75th</td>
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<td>John Doyle (D)</td>
<td>Shepherdstown</td>
<td>66th; 71st-75th</td>
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<tr>
<td>Fifty-sixth</td>
<td>Dale Manuel (D)</td>
<td>Charles Town</td>
<td>69th-75th</td>
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</table>

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

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

1 Appointed Feb. 23, 2001, to fill the vacancy created by the resignation of Arley Johnson.
2 Appointed Feb. 20, 2001, to fill the vacancy created by the resignation of Joe Martin.
### MEMBERS OF THE SENATE

#### REGULAR SESSION, 2001

#### OFFICERS

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

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
<td>72nd-75th</td>
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<td>Andy McKenzie (R)</td>
<td>Wheeling</td>
<td>73rd-75th</td>
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<tr>
<td>Second</td>
<td>Larry J. Edgell (D)</td>
<td>New Martinsville</td>
<td>74th-75th</td>
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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Appt. 11/97, 73rd-74th-75th</td>
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<td>Third</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th-68th-75th</td>
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<td></td>
<td>J. Frank Deem (R)</td>
<td>Vienna</td>
<td>(House 52nd-56th); 57th-62nd; 64th-65th; (House 68th); 72nd-75th</td>
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<td>Fourth</td>
<td>Oshel B. Craigo (D)</td>
<td>Winfield</td>
<td>(House 65th); 66th-75th</td>
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<td>Karen L. Facemyer (R)</td>
<td>Ripley</td>
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<td>Robert H. Plymale (D)</td>
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<td>Marie E. Redd (D)</td>
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<td>Sixth</td>
<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th-75th</td>
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<td>John Pat Fanning (D)</td>
<td>Inager</td>
<td>58th-64th; 67th-68th; 73rd-75th</td>
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<td>Seventh</td>
<td>Lloyd G. Jackson II (D)</td>
<td>Hamlin</td>
<td>68th-69th; 72nd-75th</td>
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<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd-64th); 65th-75th</td>
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<td>Eighth</td>
<td>John R. Mitchell, Jr. (D)</td>
<td>Charleston</td>
<td>74th-75th</td>
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<td>Vic Sprouse (R)</td>
<td>South Charleston</td>
<td>(House 72nd); 73rd-75th</td>
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<td>Ninth</td>
<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Pineville</td>
<td>Appt. 1/9/91, 70th-71st-75th</td>
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<td>William R. Wooton (D)</td>
<td>Beckley</td>
<td>(House 63rd-67th; 69th); 70th-75th</td>
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<td>Leonard W. Anderson, (D)</td>
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<td>Anita Skeens Caldwell (D)</td>
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<td>Mark Burnett (D)</td>
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<td>Shirley Lowe (D)</td>
<td>Oak Hill</td>
<td>72nd-75th</td>
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<td>Twelfth</td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/10/83, 66th); 67th-69th; 70th-71st-74th-75th</td>
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<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
<td>55th-64th; 67th-75th</td>
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<td>Thirteenth</td>
<td>Michael A. Oliverio, II (D)</td>
<td>Morgantown</td>
<td>(House 71st); 72nd-75th</td>
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<td>Roman W. Preston, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69th-72nd); 73rd-75th</td>
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<td>Fourteenth</td>
<td>Jon Blair Hunter (D)</td>
<td>Clarksburg</td>
<td>73rd-75th</td>
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<td>Sarah M. Minear (R)</td>
<td>Davis</td>
<td>72nd-75th</td>
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<tr>
<td>Fifteenth</td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr., 69th); Appt. 9/13/89, 69th-70th-75th</td>
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<td>Mike Ross (D)</td>
<td>Coalton</td>
<td>71st-75th</td>
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<td>Herbert S. Snyder (D)</td>
<td>Shenandoah Junction</td>
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<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74th-75th</td>
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<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th-75th</td>
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<td>Larry L. Rowe (D)</td>
<td>Malden</td>
<td>(House 73rd-74th); 75th</td>
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(D) Democrats ............................................. 28  
(R) Republicans ........................................... 6  
**TOTAL** ................................................................ 34
COMPETEES OF THE HOUSE OF DELEGATES
Regular Session, 2001

STANDING

AGRICULTURE AND NATURAL RESOURCES
Stemple (Chair of Agriculture), Boggs (Vice Chair of Agriculture), Yeager (Chair of Natural Resources), Ennis (Vice Chair of Natural Resources), Butcher, DeLong, Dempsey, Flanigan, Fox, Manuel, McGraw, Paxton, Pethel, Poling, Prunty, Shaver, Swartzmiller, R. Thompson, Williams, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE
R. M. Thompson (Chair of Banking), H. White (Vice Chair of Banking), Beane (Chair of Insurance), Pethel (Vice Chair of Insurance), Angotti, Beach, Butcher, Cann, Craig, Flanigan, Hatfield, Paxton, Perdue, Pino, J. Smith, Spencer, Webster, Azinger, Carmichael, Faircloth, Harrison, Trump, Walters, Webb and G. White.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Susman (Vice Chair), Fox, Fragale, Givens, Hrutkay, Kominar, Louisos, Mathews, McGraw, Morgan, Pethel, Pino, Varner, Webster, H. White, Wills, Wright, Anderson, Armstead, Ellem, Harrison, Overington and Webb.

EDUCATION
Mezzatesta (Chair), Williams (Vice Chair), Beach, Dempsey, Fragale, Hubbard, Fahey, Fox, Louisos, Mathews, Morgan, Paxton, Perry, Poling, Shaver, Shelton, Stemple, Susman, Swartzmiller, Canterbury, Carmichael, Harrison, Overington, Romine and L. Smith.
FINANCE
Michael (Chair), Doyle (Vice Chair), Beane, Boggs, Browning, Campbell, Cann, Compton, Frederick, Keener, Kominar, Leach, Mezzatesta, Proudfoot, R. M. Thompson, Varner, Warner, H. White, Anderson, Ashley, Evans, Fletcher, Hall, Stalnaker and G. White.

GOVERNMENT ORGANIZATION

HEALTH AND HUMAN RESOURCES
Compton (Chair), Perdue (Vice Chair), Angotti, Brown, Fahey, Dempsey, Fleischauer, Frederick, Hatfield, Hubbard, Leach, Mahan, Marshall, Mathews, J. Smith, Spencer, Stemple, Susman, Warner, Ashley, Carmichael, Hall, Romine, Schadler and L. Smith.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS
Hubbard (Chair of Industry & Labor), Tucker (Vice Chair of Industry & Labor), Cann (Chair of Economic Development & Small Business), Frederick (Vice Chair of Economic Development & Small Business), Caputo, Coleman, Fahey, Fragale, Keener, Louisos, Mahan, Manchin, Martin, Perry, Poling, Prunty, Stephens, C. White, Williams, Canterbury, Carmichael, Ellem, Fletcher, Overington and Walters.

JUDICIARY
Amores (Chair), Manuel (Vice Chair), Caputo, Craig, Ferrell, Fleischauer, Givens, Hrutkay, Mahan, Pethtel, Pino, J. Smith, Spencer, Stemple, R. Thompson, Webster, C. White, Wills, Coleman, Armstead, Faircloth, Riggs, Schadler, Smirl and Webb.
POLITICAL SUBDIVISIONS
Proudfoot (Chair), Marshall (Vice Chair), Brown, Browning, Campbell, Ennis, Fahey, Ferrell, Kuhn, Martin, Mathews, Morgan, Perry, Shaver, Swartzmiller, C. White, Wills, Yeager, Armstead, Azinger, Schadler, Smirl, Stalnaker, Trump and G. White.

ROADS AND TRANSPORTATION
Warner (Chair), Shelton (Vice Chair), Beach, Boggs, Butcher, Coleman, Craig, Ennis, Hubbard, Kominar, Manchin, Marshall, Stephens, Susman, R. Thompson, R. M. Thompson, C. White, Yeager, Border, Canterbury, Evans, Leggett, Riggs, Romine and Stalnaker.

RULES
Kiss (Chair), Amores, Douglas, Givens, Mezzatesta, Michael, Pino, Staton, Varner, Trump, Faircloth and Harrison.

VETERANS AFFAIRS
Givens (Chair), Flanigan (Vice Chair), Coleman, Craig, DeLong, Doyle, Hrutkay, Kuhn, Manchin, Manuel, Proudfoot, Shelton, Stemple, Stephens, R. M. Thompson, Tucker, H. White, Wright, Yeager, Ashley, Azinger, Ellem, Fletcher, Smirl and L. Smith.

SELECT

REDISTRICTING
Kiss (Chair), Kominar (Vice Chair), Amores, Beane, Boggs, Butcher, Campbell, Caputo, Doyle, Fleischauer, Frederick, Givens, Leach, Mezzatesta, Pino, J. Smith, Staton, Stemple, Varner, Warner, Williams, Anderson, Overington, Schadler, Smirl, Stalnaker, Trump and Walters.
JOINT

ENROLLED BILLS
Manchin (Chair), Dempsey (Vice Chair), Butcher and Overington.

GOVERNMENT AND FINANCE
Kiss (Chair), Amores, Mezzatesta, Michael, Staton, Hall and Trump.

GOVERNMENT OPERATIONS
Douglas (Chair), Kuhn (Vice Chair), Varner, Border and Leggett.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Mahan (Chair), Wills (Vice Chair), Cann, Kominar, Faircloth and Riggs.

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

RULES
Kiss (Chair), Staton and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

JOINT COMMISSION ON ECONOMIC DEVELOPMENT
Cann (Chair), Amores, Browning, Craig, Kominar, Mezzatesta, Michael and Stalnaker.

FOREST MANAGEMENT REVIEW
Stemple (Chair), Butcher (Vice Chair), Pino, Proudfoot, Williams and Canterbury.
XLIV HOUSE OF DELEGATES COMMITTEES

INTERSTATE COOPERATION
Caputo (Chair), J. Smith, Doyle, Frederick, Yeager, Leggett and Overington.

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

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

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

SPECIAL INVESTIGATIONS
Kiss (Chair), Michael, Staton, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 2001

STANDING

AGRICULTURE
Anderson (Chair), Love (Vice Chair), Edgell, Helmick, Hunter, Mitchell, Ross, Unger, Facemyer and Minear.

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

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

ECONOMIC DEVELOPMENT
McCabe (Chair), Kessler (Vice Chair), Anderson, Bowman, Craigo, Fanning, Helmick, Jackson, Plymale, Unger, Wooton, McKenzie and Sprouse.

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

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Burnette (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, McCabe, Plymale, Prezioso, Unger, Boley, Minear and Sprouse.
XLVI SENATE COMMITTEES

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Burnette, Chafin, Jackson, Kessler, McCabe, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse.

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

INTERSTATE COOPERATION
Snyder (Chair), Caldwell (Vice Chair), Fanning, Minard, Rowe, Unger and Minear.

JUDICIARY
Wooton (Chair), Snyder (Vice Chair), Burnette, Caldwell, Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe, Deem, Facemyer and McKenzie.

LABOR
Fanning (Chair), Rowe (Vice Chair), Burnette, Edgell, Hunter, Love, Mitchell, Prezioso, Facemyer and McKenzie.

MILITARY
Hunter (Chair), Edgell (Vice Chair), Bailey, Caldwell, Minard, Oliverio, Prezioso, Boley and Deem.

NATURAL RESOURCES
Helmick (Chair), Mitchell (Vice Chair), Anderson, Bowman, Craigo, Love, Minard, Plymale, Prezioso, Ross, Rowe, Snyder, Deem and Minear.

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

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

SMALL BUSINESS
Oliverio (Chair), Unger (Vice Chair), Anderson, Burnette, Craigo, Kessler, McCabe, Redd, Ross, Sharpe, Boley and Deem.

TRANSPORTATION
Ross (Chair), Redd (Vice Chair), Caldwell, Kessler, Love, Oliverio, Rowe, Facemyer and McKenzie.

SELECT

REDISTRICTING
*Clerk’s Note: The entire membership of the Senate serves as a Committee of the Whole in matters relating to redistricting.

JOINT

ENROLLED BILLS
Rowe (Chair), Bailey, Caldwell, Mitchell and Facemyer.

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

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

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

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

RULES
Tomblin (Chair), Chafin and Sprouse.
JOINT COMMISSION ON ECONOMIC DEVELOPMENT
McCabe, (Chair), Craigo, Helmick, Jackson, Plymale, Unger, Wooton and Sprouse.

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

INTERSTATE COOPERATION
Snyder (Chair), Caldwell (Vice Chair), Fanning, Minard, Rowe, Unger and Minear.

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

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Prezioso (Chair), Craigo, Hunter, Plymale, Sharpe and Boley.

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

SPECIAL INVESTIGATIONS
Tomblin (Chair), Chafin, Wooton, Boley and Sprouse.
AN ACT to amend and reenact sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixteen, article ten, chapter seventeen-a of said code, all relating to the waste tire remediation/environmental cleanup fund; renaming the waste tire remediation/environmental cleanup fund the A. James Manchin fund; and authorizing the use of the fund for the tire disposal program.

Be it enacted by the Legislature of West Virginia:
That sections six and seven, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section sixteen, article ten, chapter seventeen-a be amended and reenacted, all to read as follows:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

§17-24-7. Remediation; liability for remediation and court costs.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title; performance review.

1 (a) There is hereby created in the state treasury a special revenue fund known as the “A. James Manchin Fund”. All moneys appropriated, deposited or accrued in this fund shall be used exclusively for remediation of waste tire piles as required by this article for the tire disposal program established under section four of this article or for the purposes of subsection (c), section five of this article. The fund shall consist of the proceeds from the sale of waste tires; fees collected by the division of motor vehicles as provided for in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or private grants; legislative appropriations; loans and any other funding source available for waste tire remediation. Any balance remaining in the fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and be used only in a manner consistent with the requirements of this article.

(b) No further collections or deposits shall be made after the commissioner certifies to the governor and the Legislature that the remediation of all waste tire piles that were determined
by the commissioner to exist on the first day of June, two
thousand one, has been completed.

(c) The joint committee on government operations shall,
pursuant to authority granted in article ten, chapter four of this
code, conduct a preliminary performance review of the divi-
sion’s compliance with the waste tire remediation mandated in
this article; whether the purposes of this article have been met;
and whether it is appropriate to terminate this program. In
conducting such preliminary performance review, the commit-
tee shall follow the guidelines established in this article. A
preliminary review shall be completed on or before the first day
of January, two thousand three.

§17-24-7. Remediation; liability for remediation and court costs.

(a) Any person who has prior or subsequent to the effective
date of this act illegally disposed of waste tires or has waste
tires illegally disposed on his or her property shall be liable for:

(1) All costs of removal or remedial action incurred by the
division;

(2) Any other necessary costs of remediation, including
properly disposing of waste tires and damage to adjacent
property owners; and

(3) All costs incurred in bringing civil actions under this
article.

(b) The division shall notify any person who owns real
property or rights to property where a waste tire pile is located
that remediation of the waste tire pile is necessary. The division
shall make and enter an order directing such person or persons
to remove and properly dispose of the waste tires. The division
shall set a time limit for completion of the remediation. The
order shall be served by registered or certified mail, return
receipt requested, or by a county sheriff or deputy sheriff.

(c) If the remediation is not completed within the time limit
or the person cannot be located or the person notifies the
division that he or she is unable to comply with the order, the
division may expend funds, as provided herein, to complete the
remediation. Any amounts so expended shall be promptly
repaid by the person or persons responsible for the waste tire
pile. Any person owing remediation costs and or damages shall
be liable at law until such time as all costs and or damages are
fully paid.

(d) Authorized representatives of the division have the
right, upon presentation of proper identification, to enter upon
any property for the purpose of conducting studies or explor­
atory work to determine the existence of adverse effects of a
waste tire pile, to determine the feasibility of the remediation or
prevention of such adverse effects and to conduct remediation
activities provided for herein. Such entry is an exercise of the
police power of the state and for the protection of public health,
safety and general welfare and is not an act of condemnation of
property or trespass thereon. Nothing contained in this section
eliminates any obligation to follow any process that may be
required by law.

(e) There is hereby created a statutory lien upon all real
property and rights to the property from which a waste tire pile
was remediated for all reclamation costs and damages incurred
by the division. The lien created by this section shall arise at the
later of the following:

(1) The time costs are first incurred by the division; or

(2) The time the person is provided, by certified or regis­
tered mail, or personal service, written notice as required by
this section.
The lien shall continue until the liability for the costs or judgment against the property is satisfied.

(f) Liens created by this section shall be duly recorded in the office of the clerk of the county commission in the county where the real property is located, be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The division shall have the power and authority to enforce such liens in a civil action to recover the money due for remediation costs and damages plus court fees and costs and reasonable attorney’s fees.

(g) The division may foreclose upon the premises by bringing a civil action, in the circuit court of the county where the property is located, for foreclosure and an order to sell the property to satisfy the lien.

(h) Any proceeds from any sale of property obtained as a result of execution of a lien or judgment under this section for remediation costs, excluding costs of obtaining judgment and perfecting the lien, shall be deposited into the A. James Manchin fund of the state treasury.

(i) The provisions of this section do not apply and no lien may attach to the right-of-way, easement or other property interest of a utility, whether electric, gas, water, sewer, telephone, television cable or other public service unless the utility contributed to the illegal tire pile.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATION OF TITLE, AND ANTI THEFT PROVISIONS.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin fund.
In addition to each fee provided for in this article, an additional five-dollar fee shall be imposed on the issuance of each certificate of title issued pursuant to article three of this chapter. All money collected under this section shall be deposited in the state treasury and credited to the A. James Manchin fund to be established within the department of highways for waste tire remediation in accordance to the provisions of article twenty-four, chapter seventeen of this code. The additional fee provided herein shall be imposed for each application for certificate and renewal thereof made on or after the first day of July, two thousand: Provided, That no further collections or deposits shall be made after the commissioner certifies to the governor and the Legislature that the remediation of all waste tire piles that were determined by the commissioner to exist on the first day of June, two thousand one, has been completed.

CHAPTER 2

(Com. Sub. for H. B. 2782 — By Delegates Staton, Amores, McGraw, Beane, Wills, Keener and R. Thompson)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions and suits at law; and providing that an action dismissed as a result of process not having been served is not a dismissal on the merits.

Be it enacted by the Legislature of West Virginia:
That section eighteen, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-18. Extension of period for new action after dismissal or reversal where the action is timely filed.

(a) For a period of one year from the date of an order dismissing an action or reversing a judgment, a party may refile the action if the initial pleading was timely filed and (i) the action was involuntarily dismissed for any reason not based upon the merits of the action or (ii) the judgment was reversed on a ground which does not preclude a filing of new action for the same cause.

(b) For purposes of subsection (a) of this section, a dismissal not based upon the merits of the action includes, but is not limited to:

(1) A dismissal for failure to post an appropriate bond;

(2) A dismissal for loss or destruction of records in a former action; or

(3) A dismissal for failure to have process timely served, whether or not the party is notified by the court of the pending dismissal.

CHAPTER 3

(S. B. 460 — By Senators Wooton and Chafin)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
designated chapter twenty-four-e, relating to forming a statewide addressing and mapping board; establishing a temporary board; and providing the rural areas of the state with city-type addressing.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 24E. STATEWIDE ADDRESSING AND MAPPING.

ARTICLE 1. WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD.

§24E-1-1. Legislative findings; purpose.
§24E-1-3. West Virginia statewide addressing and mapping board created; appointment of board members; submission of recommendations by certain organizations; term of office; compensation and expenses of board members.
§24E-1-4. Powers and duties of the West Virginia statewide addressing and mapping board.
§24E-1-5. West Virginia statewide addressing and mapping fund.
§24E-1-6. Legislative and emergency rules governing addressing and mapping standards.
§24E-1-7. Request for proposals; title to works; disbursements to vendors and public agencies; legislative and emergency rules.
§24E-1-9. Standard fees for maps, compilations or other works.
§24E-1-10. Use of facilities of public service commission.
§24E-1-11. Termination of board; transfer of duties and title to works to counties and public service commission; legislative and emergency rules for standards; legislative and emergency rules for standard fees to be charged by counties for digital or other maps, compilations or other works.
§24E-1-12. Liberal construction.

§24E-1-1. Legislative findings; purpose.

(a) The Legislature finds and declares:
(1) That large areas of the state remain without city-type addressing, despite the best efforts of local officials;

(2) That city-type addressing is essential to the prompt and accurate dispatch of emergency service providers;

(3) That citizens of rural areas of the state that are not city-type addressed should enjoy the same security, safety and peace of mind as citizens in those areas that have been city-type addressed;

(4) That a statewide system for city-type addressing would provide citizens of rural areas throughout the state with security, safety and peace of mind;

(5) That, despite progress in certain areas, a statewide addressing system cannot be achieved without action by the Legislature;

(6) That certain counties and municipalities in the state have, nonetheless, made progress in achieving city-type addressing in their respective jurisdictions and their accomplishments ought to be respected;

(7) That a statewide mapping system, utilizing digital mapping systems, geographic information systems, global positioning systems or other appropriate systems, would further aid the dispatch of emergency service providers, thereby further increasing the security, safety and peace of mind of the citizens of the state;

(8) That a temporary board, consisting of qualified persons representing the disciplines most affected by an integrated statewide addressing and mapping system, is the best means to achieve a system; and
(9) That certain entities have shown interest in providing
for a source of funding for accomplishing a system and should
be encouraged to do so.

(b) It is, therefore, the purpose of this article to achieve a
statewide addressing and mapping system that will be as
uniform as possible while respecting the past accomplishments
of local officials, that will be achieved quickly and cost
effectively, that will be accomplished at a minimal cost, if any,
to the taxpayer and that will use sound and recognized methods
and standards.


(a) “Board” means the West Virginia statewide addressing
and mapping board.

(b) “Emergency service provider” means any emergency
services organization or public safety unit.

(c) “Fund” means the West Virginia statewide addressing
and mapping fund.

(d) “Local exchange telephone company” means any public
utility that is engaged in the provision of local exchange
telephone service in this state and that operates and maintains
an automatic location identification database of addresses of
subscribers for use with enhanced emergency telephone
systems.

(e) “Public agency” means any municipality, county, public
district or public authority that provides or has the authority to
provide firefighting, police, ambulance, medical rescue or other
emergency services.

§24E-1-3. West Virginia statewide addressing and mapping
board created; appointment of board members;
submission of recommendations by certain organizations; term of office; compensation and expenses of board members.

(a) There is hereby created the West Virginia statewide addressing and mapping board. The board is to be composed of eleven members appointed by the governor, one of whom is to be a public service commissioner or a member of the staff of the public service commission, one of whom is to be an official or employee of the state geological and economic survey, established and continued under section four, article two, chapter twenty-nine of this code, qualified in the field of geographic information systems, one of whom is to be an official or employee of the department of military affairs and public safety, one of whom is to be an official or employee of the division of highways, one of whom is to be a county commissioner, one of whom is to be a county assessor, one of whom is to be a mayor of a municipality or a municipal official, one of whom is to be a director of an enhanced emergency telephone system from a county with a population of thirty thousand or less as shown by the last federal census, one of whom is to be a director of an enhanced emergency telephone system from a county with a population of greater than thirty thousand as shown by the last federal census, one of whom is to be a representative of a local exchange telephone company, and one of whom is to be a member of the public at-large but may be affiliated with any of the above entities. In making appointments to the board, the governor shall, to the extent possible, ensure representation on the board, by one or more members, of any entity providing twenty-five percent or more of funding to the statewide addressing and mapping fund created by section five of this article.

(b) The governor shall designate a member to preside at the first meeting of the board until a chairman is elected. At the first meeting of the board, it shall elect a chairman from its
members. The member so elected is to hold the office of chairman at the will and pleasure of the majority of the total membership of the board.

(c) The public service commission, the director of the state geological and economic survey, the secretary of the department of military affairs and public safety, the commissioner of the division of highways, the association of counties, the West Virginia county commissioners' association and the West Virginia municipal league, the West Virginia enhanced 911 council and each local exchange telephone company shall submit two names of recommended persons to the governor for each appointment representing its respective discipline. The governor is not limited in his or her appointments, however, to the names so recommended.

(d) The term of office for members of the board is six years.

(e) Members of the board are entitled to the same expense reimbursement paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the performance of official duties. Their expense reimbursement is to be paid from the West Virginia statewide addressing and mapping fund created by section five of this article.

§24E-1-4. Powers and duties of the West Virginia statewide addressing and mapping board.

The board may exercise all powers necessary or appropriate to effectuate the purposes of this article, including, without limitation, the powers:

(1) To adopt statewide addressing and mapping standards and requirements in accordance with sections six and seven of this article;
(2) To enter into any agreements or other transactions in order to accomplish the addressing and mapping, in order to secure funding for the statewide addressing and mapping fund created by section five of this article or otherwise in order to accomplish the purposes of the article;

(3) To manage and use the West Virginia statewide addressing and mapping fund created by section five of this article in order to pay for the costs of statewide addressing and mapping;

(4) To accept any private, federal or other funding that may be available to effectuate the purposes of this article and to deposit any funding in the West Virginia statewide addressing and mapping fund created by section five of this article; and

(5) To do all other acts necessary and proper to carry out its powers and the purposes of this article.

§24E-1-5. West Virginia statewide addressing and mapping fund.

(a) There is hereby created a special fund that is designated as the "West Virginia Statewide Addressing and Mapping Fund". The fund shall be treated by the auditor and treasurer as a special revenue fund and not as part of the general revenue of the state: Provided, That nothing in this article can be construed to require any appropriation by the Legislature to the fund.

(b) The board shall hold the proceeds of the fund in trust and shall manage the proceeds of the fund solely to accomplish the purposes of this article.

(c) Disbursements from the fund may be made only upon the written requisition of the chairman accompanied by a certified resolution of the board and may be made solely to accomplish the purposes of this article.
(d) Any amount remaining in the fund upon the termination of the board is to be transferred to county commissions of the state and may be used by them solely for the purposes of maintaining and updating the statewide addressing and mapping to be accomplished by this article. No later than the first day of January, two thousand five, the board shall propose rules for governing the distribution of any amount among the various county commissions for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules may not be filed as emergency rules.

§24E-1-6. Legislative and emergency rules governing addressing and mapping standards.

(a) The board is hereby authorized to propose rules governing statewide addressing and mapping standards for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. Emergency rules are specifically authorized for this purpose.

(b) Any rules proposed by the board must exempt from the statewide addressing and mapping standards any county or municipality that has completed city-type addressing under the authority granted in section three, article one, chapter seven of this code or otherwise.

(c) In proposing any rules, the board shall consider all relevant factors, including, but not limited to, the following:

(1) The system and costs of administering a city-type addressing system;

(2) The system and costs of separately naming or renaming roads and streets;

(3) The desirability of standard road and street suffixes;
(4) The desirability of standards for driveways and private roads;

(5) The desirability of standard address numbering increments;

(6) The system and costs of assigning address numbers;

(7) The system and costs for road naming and numbering for neighboring localities;

(8) The desirability of standards using digital mapping, geographic information systems and global positioning systems;

(9) The desirability of standards applicable to road signs;

(10) The desirability for requirements for displaying address numbers; and

(11) The desirability of the adoption of national emergency number association standards.

§24E-1-7. Request for proposals; title to works; disbursements to vendors and public agencies; legislative and emergency rules.

(a) The board shall, no later than the first day of January, two thousand two, issue a request or requests for proposals for statewide addressing and mapping. The request for proposal must include requirements that each map, compilation or other work created as a result of the statewide addressing and mapping intended to be accomplished by this article must be a "work made for hire" within the meaning of the copyright laws of the United States, 17 U. S. C. §101, et seq., and that all right, title and interest to each map, compilation or other work must vest in the board. The request or requests for proposal may
include any standards or requirements the board finds necessary or proper, including, without limitation, compliance with any applicable emergency or legislative rules. The board shall select a qualified vendor or vendors in accordance with the applicable provisions of article three, chapter five-a of this code. Disbursements from the West Virginia statewide addressing and mapping fund established by section five of this article are specifically authorized in order to pay the selected vendor or vendors.

(b) The board may also consider applications of public agencies, including, without limitation, county commissions and municipalities, to participate in the statewide addressing and mapping to be accomplished by this article. Disbursements from the West Virginia statewide addressing and mapping fund are specifically authorized in order to reimburse such public agencies, in whole or in part, for the costs incurred by them in participating in the addressing and mapping to be accomplished by this article, in the amount, if any, determined by the board.

(c) No later than the first day of January, two thousand two, the board shall propose legislative rules to accomplish the purposes of this section in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules may require public agencies that apply for reimbursement under this section, but that are exempt from statewide standards under section six of this article, to comply with acceptable standards to be specified in those rules as a condition of receiving reimbursement. The standards, however, are not necessarily required to be the statewide standards to be proposed by the board in legislative rules under section six of this article. Emergency rules are specifically authorized for the purposes of this section.

No person is liable for damages for injury, death or loss to persons or property arising from any act or omission, except willful or wanton misconduct, in connection with developing or implementing the statewide addressing and mapping to be accomplished by this article or in connection with providing information or assistance related to the addressing and mapping or as a result of providing funding to the statewide addressing and mapping fund created by section five of this article.

§24E-1-9. Standard fees for maps, compilations or other works.

(a) The board is hereby authorized to propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish standard fees for copies or use of any maps, compilations or other works that may be created as a result of the statewide addressing and mapping intended to be accomplished by this article. Those rules must exempt from the payment of fees, however, any entity providing twenty-five percent or more of the funding to the statewide addressing and mapping fund created by section five of this article. Those rules also must exempt from the payment of the fees county commissions obtaining the maps, compilations or other works for use in its enhanced emergency telephone system established under article six, chapter twenty-four of this code. The board may propose other exemptions in such rules. The otherwise payable standard fees must be reasonable and must, to the extent possible, be based on cost. Until the termination of the board in accordance with section eleven of this article, any fees are to be payable to the board and the board shall deposit those fees in the West Virginia statewide addressing and mapping fund created by section five of this article. Emergency rules are specifically authorized for the purposes of this section.

(b) Prior to the distribution or use of any maps, compilations or other works created as a result of the statewide address-
ing and mapping intended to be accomplished by this article, the board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing the conditions and requirements governing the distribution of those works, including provisions ensuring the effective distribution of those works to persons with a legitimate need to know, but respecting, where possible, any reasonable expectations of privacy of the information contained in those works, such as the names, addresses and locations of the citizens of the state. The rules proposed for this purpose must be consistent with the West Virginia freedom of information act, article one, chapter twenty-nine-b of this code. Emergency rules are specifically authorized for this purpose.

§24E-1-10. Use of facilities of public service commission.

The board may, with the permission of, and under the supervision of, the public service commission, use the facilities, staff or other resources of the public service commission in connection with accomplishing the purposes of this article.

§24E-1-11. Termination of board; transfer of duties and title to works to counties and public service commission; legislative and emergency rules for standards; legislative and emergency rules for standard fees to be charged by counties for digital or other maps, compilations or other works.

(a) The board shall terminate the first day of April, two thousand seven, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article. The board shall, as its last official act prior to its termination, transfer all right, title and interest to any maps, compilations or other works that may be created as a result of the statewide
addressing and mapping intended to be accomplished by this article to the respective county commissions.

(b) Upon the termination of the board, county commissions shall maintain and update the addressing and mapping systems within their respective jurisdictions under the standards established by the board, as updated thereafter by the public service commission under this section.

(c) Upon termination of the board, the public service commission shall, from time to time as it finds reasonable and in the public interest, maintain and update the standards for statewide addressing and mapping in accordance with the procedures for rulemaking under section seven, article one, chapter twenty-four of this code.

(d) The public service commission is hereby authorized to prescribe rules, in accordance with the procedures for rulemaking under section seven, article one, chapter twenty-four of this code and effective upon termination of the board, for standard fees to be charged by county commissions for copies or use of any maps, compilations or other works created as a result of the statewide addressing and mapping to be accomplished by this article and to be maintained and updated by the county commissions after the termination of the board. The rules must include the exemptions provided under section nine of this article. The fees established by the rules must be reasonable and must, to the extent possible, be based on cost. The public service commission shall, from time to time as it finds reasonable and in the public interest, revise and update these rules, including, without limitation, the standard fees to be charged.

§24E-1-12. Liberal construction.

This article is remedial and is to be construed liberally in order to effectuate its purposes.
AN ACT to amend and reenact section four, article one-a, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one-b of said chapter by adding thereto a new section, designated section twenty-five, all relating to authorizing the adjutant general to appoint an assistant adjutant general and other general officer positions; and to provide a two thousand dollar bonus to those members who accept a commission upon graduation from officer candidate school.

Be it enacted by the Legislature of West Virginia:

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

Article
1A. Adjutant General.
1B. National Guard.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-4. Assistant adjutants general and other authorized general officers.
The governor shall appoint an assistant adjutant general for air and an assistant adjutant general for army, each with the rank of brigadier general, or any other rank recognized by federal authority, who shall be the deputy commander of the air national guard and the deputy commander of the army national guard, respectively. The adjutant general may appoint an assistant adjutant general for the West Virginia national guard, and any other general officer positions that are federally authorized by tables of distribution and allowance, modified tables of organization and equipment, and joint manning documents, each with the rank of brigadier general, or any other rank recognized by federal authority. The adjutant general may also appoint an assistant adjutant general with the rank of colonel or any other rank recognized by the federal authority, who shall be the executive officer and administrative assistant to assist the adjutant general in the administration of the adjutant general’s department (or department of military affairs). The assistant adjutant general serving as the executive officer and the administrative assistant may also be the deputy commander of the army or air national guard. The assistant adjutants general shall be upon appointment, federally recognized officers of the air national guard and the army national guard, respectively.

**ARTICLE 1B. NATIONAL GUARD.**

§15-1B-25. Commissioning bonus.

Upon graduation from the officer candidate school conducted at the regional training institute, Camp Dawson, each member of the West Virginia army national guard who accepts a commission shall be entitled to a commissioning bonus of two thousand dollars.
CHAPTER 5

(Com. Sub. for H. B. 2119 — By Delegate Warner)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating financial reporting requirements of the auditor, supreme court of appeals and the secretary of state to recognize the electronic accounting control system.

Be it enacted by the Legislature of West Virginia:

That section four, article one, chapter fifty-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. FEES AND ALLOWANCES.

§59-1-4. Fees collected by secretary of state, auditor and clerk of supreme court of appeals to be paid into state treasury; accounts; reports.

The fees to be charged by the auditor, secretary of state and clerk of the supreme court of appeals, by virtue of this article or any other law, shall be the property of the state of West Virginia, and they and each of them shall account for and pay into the state treasury at least once every thirty days all fees, by any of them collected, or appearing to be due to the state, to the credit of the general state fund or other fund as provided by law. The auditor, secretary of state and clerk of the supreme court of appeals shall each keep a complete and accurate
account by items of all fees collected by them, and the nature of
the services rendered for which all fees were charged and
collected, in accordance with generally accepted accounting
principles, as provided in article two, chapter five-a of this
code, and all accounts shall be open to inspection and audit as
provided in article two, chapter four of this code.

CHAPTER 6

(H. B. 2803 — By Delegates Warner and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-a, chapter
twenty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the qualifications of
the director of the state aeronautics commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-5. Director of aeronautics; appointment, qualifications,
compensation, powers and duties; administrative
and other assistants.

A director of aeronautics shall be appointed by the commis-
son, who shall serve for an indefinite term at the pleasure of
the commission. The director shall be appointed with due
regard to his or her fitness, by aeronautical education and by
knowledge of and recent practical experience in aeronautics, for
the efficient dispatch of the powers and duties vested in and
imposed upon him by this article. The director shall devote his
or her time to the duties of his or her office as required and
prescribed by this article and shall not have any pecuniary
interest in, or any stock in, or bonds of, any civil aeronautical
enterprise. The director shall receive such compensation as the
commission may determine, which said compensation shall,
however, conform in general to the compensation received by
persons occupying positions of similar importance and respon-
sibility with other agencies of this state. The director shall be
reimbursed for all traveling and other expenses incurred by him
or her in the discharge of his or her official duties in accordance
with state travel rules. The director shall be the executive
officer of the commission and under its supervision shall
administer the provisions of this article and the rules and orders
established thereunder and all other laws of the state relative to
aeronautics. The director shall attend, but not vote, at all
meetings of the commission. The director shall act as secretary
of the commission and shall be in charge of its offices and
responsible to the commission for the preparation of reports and
the collection and dissemination of data and other public
information relating to aeronautics. At the direction of the
commission the director shall, together with the chairman of the
commission, execute all contracts entered into by the commis-
sion which are legally authorized and for which funds are
provided in any appropriations act. The commission may, by
written order filed in its office, delegate to the director any of
the powers or duties vested or imposed upon it by this article.
Such delegated powers and duties may be exercised by such
director in the name of the commission. The commission may
also employ such administrative, engineering, technical and
clerical assistance as may be required. The director and such
other assistants may, under the supervision of the commission,
insofar as is reasonably possible, make available the engineer-
(Com. Sub. for H. B. 2744 — By Delegates Williams, Stemple, Butcher and Boggs)

[Passed April 10, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to liability for certain damage or destruction of a sylvicultural or agricultural field test crop and damages recoverable.

Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 six, to read as follows:

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-6. Liability for damage or destruction of sylvicultural or agricultural field test crop; damages.

(a) Any person or legal entity who willfully and knowingly damages or destroys, or allows an instrumentality within his or
her control to damage or destroy a sylvicultural or agricultural field test crop that is grown for personal purposes, commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local government agency, shall be liable for twice the market value of the crop damaged or destroyed prior to damage or destruction, as determined by a court of competent jurisdiction, plus interest and reasonable court costs. Where the damaged or destroyed crops are grown for testing or research purposes, damages shall also include twice the actual damages relating to production, research, testing, replacement and crop development costs directly related to the crop that has been damaged or destroyed.

(b) The rights and remedies available under this section are in addition to any other rights or remedies otherwise available in law or statute.

(c) For the purpose of this section, the term “person” means an individual or any nongovernmental group, association, corporation or any other nongovernmental entity.

CHAPTER 8

(Com. Sub. for H. B. 2555 — By Delegates R. M. Thompson, Amores, Staton, Mahan, Manuel, Warner and Bean)

[Passed April 6, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article ten, chapter seven of the code of West Virginia, one thousand nine
Be it enacted by the Legislature of West Virginia:

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

Chapter
  7. County Commissions and Officers.
  19. Agriculture.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

§7-10-5. Destruction of animals.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.
(a) Subject to the provisions of subsection (h) of this section, a humane officer shall take possession of any animal, including birds or wildlife in captivity, known or believed to be abandoned, neglected, deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion, or cruelly treated or used, as defined in sections nineteen and nineteen-a, article eight, chapter sixty-one of this code.

(b) The owner or person in possession, if his or her identity and residence is known, of any animal seized pursuant to subsection (a) of this section, shall be provided written notice of the seizure, his or her liability for the cost and care of the animal seized as provided in this section, and the right to request a hearing before a magistrate in the county where the animal was seized. The magistrate court shall schedule any hearing requested within ten working days of the receipt of the request. The failure of an owner or person in possession to request a hearing within five working days of the seizure is prima facie evidence of the abandonment of the animal. At the hearing, if requested, the magistrate shall determine if probable cause exists to believe that the animal was abandoned, neglected or deprived of necessary sustenance, shelter, medical care or reasonable protection from fatal freezing or heat exhaustion, or otherwise treated or used cruelly as set forth in this section.

(c) Upon finding of probable cause, or if no hearing is requested and the magistrate finds probable cause based upon the affidavit of the humane officer, the magistrate shall enter an order authorizing any humane officer to maintain possession of the animal pending further proceedings. During this period the humane officer is authorized to place the animal in a safe private home or other safe private setting in lieu of retaining the
animal in an animal shelter. The person whose animal is seized is liable for all costs of the care of the seized animal.

(d) Any person whose animal is seized and against whom a finding of probable cause is rendered pursuant to this section is liable for the costs of the care, medical treatment and provisions for the animal during any period it remains in the possession of the humane officer. The magistrate may require the person liable for these costs to post bond to provide for the maintenance of the seized animal.

(e) If, after the humane officer takes possession of the animal pursuant to the finding of probable cause, a licensed veterinarian determines that the animal should be humanely destroyed to end its suffering, the veterinarian may order the animal to be humanely destroyed and neither the humane officer, animal euthanasia technician, nor the veterinarian is subject to any civil or criminal liability as a result of such action.

(f) The term “humanely destroyed” as used in this section means:

   (1) Humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with the provisions of article ten-a, chapter thirty of this code; or

   (2) any other humane euthanasia procedure approved by the American veterinary medical association, the humane society of the United States, or the American humane association.

(g) In case of an emergency in which an animal cannot be humanely destroyed in an expeditious manner, an animal may be destroyed by shooting if:
(1) The shooting is performed by someone trained in the use of firearms with a weapon and ammunition of suitable caliber and other characteristics designed to produce instantaneous death by a single shot; and

(2) Maximum precaution is taken to minimize the animal’s suffering and to protect other persons and animals.

(h) The provisions of this section do not apply to farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl, wildlife or game farm production and management, nor to the humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. §2131 et seq. and the regulations promulgated thereunder.

§7-10-5. Destruction of animals.

Any humane officer or animal shelter lawfully may humanely destroy or cause to be humanely destroyed any animal in a manner consistent with the provisions of section four of this article when, in the judgment of the humane officer or director or supervisor of an animal shelter and upon the written certificate of a regularly licensed veterinary surgeon, the animal appears to be injured, disabled or diseased past recovery or the animal is unclaimed.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

(a) All dogs seized and impounded as provided in this article, except dogs taken into custody under section two of this article, shall be kept housed and fed in the county dog pound for five days after notice of seizure and impounding has been given
or posted as required by this article, at the expiration of which
time all dogs which have not previously been redeemed by their
owners as provided in this article, shall be sold or humanely
destroyed. No dog sold as provided in this section may be
discharged from the pound until the dog has been registered and
provided with a valid registration tag.

(b) The term “humanely destroyed” as used in this section
means:

(1) Humane euthanasia of an animal by hypodermic
injection by a licensed veterinarian or by an animal euthanasia
technician certified in accordance with the provisions of article
ten-a, chapter thirty of this code; or

(2) Any other humane euthanasia procedure approved by the
American veterinary medical association, the humane society
of the united states, or the American humane association.

(c) In an emergency or in a situation in which a dog cannot
be humanely destroyed in an expeditious manner, a dog may be
destroyed by shooting if:

(1) The shooting is performed by someone trained in the
use of firearms with a weapon and ammunition of suitable
caliber and other characteristics designed to produce instanta-
neous death by a single shot; and

(2) Maximum precaution is taken to minimize the dog’s
suffering and to protect other persons and animals.

(d) The owner, keeper or harborer of any dog seized and
impounded under the provisions of this article may, at any time
prior to the expiration of five days from the time that notice of
the seizure and impounding of the dog has been given or posted
as required by this article, redeem the dog by paying to the dog
warden or his or her authorized agent or deputy all of the costs
assessed against the dog, and by providing a valid certificate of
registration and registration tag for the dog.

(e) Reasonable costs and fees, in an amount to be deter-
mined from time to time by the county commission, shall be
assessed against every dog seized and impounded under the
provisions of this article, except dogs taken into custody under
section two of this article. The cost shall be a valid claim in
favor of the county against the owner, keeper or harborer of any
dog seized and impounded under the provisions of this article
and not redeemed or sold as provided in this section, and the
costs shall be recovered by the sheriff in a civil action against
the owner, keeper or harborer.

(f) A record of all dogs impounded, the disposition of the
dogs and a statement of costs assessed against each dog shall be
kept by the dog warden and a transcript thereof shall be
furnished to the sheriff quarterly.

CHAPTER 9
(S. B. 58 — By Senator Bailey)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twenty-three; and
to amend and reenact section twenty, article one, chapter five of
said code, all relating to annual reports; and requiring that annual
reports to be submitted by agencies, commissions and boards to
the Legislature, legislative manager, legislative auditor, president
of the Senate and speaker of the House of Delegates or the joint
committee on government and finance be sent to the legislative librarian.

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

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

Chapter
4. The Legislature.
5. General powers and authority of the governor, secretary of state and attorney general; board of public works; miscellaneous agencies, commissions, offices, programs, etc.

**CHAPTER 4. THE LEGISLATURE.**

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

§4-1-23. Annual reports to be sent to the legislative librarian.

1 Any office, agency, commission or board required by any section of this code to provide an annual report to the Legislature, legislative manager, legislative auditor, the president of the Senate and the speaker of the House of Delegates or the joint committee on government and finance shall submit the report to the legislative librarian. All audit reports shall be submitted to the legislative manager.
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 1. THE GOVERNOR.

§5-1-20. Reports to the governor; form and contents; transmission to the Legislature; special reports.

The subordinate officers of the executive department and the officers of all public institutions of the state shall make an annual report to the governor as soon as possible after the close of each fiscal year, notwithstanding any other provision of law to the contrary. All state officers, boards, commissions, departments and institutions required by law to make reports to the governor, the Legislature or any administrative board or state official shall cover fiscal year periods and such reports shall be submitted in typewritten form or any legible form produced by mechanical means.

The governor shall by executive order prescribe the general contents of the reports to be submitted to him. The form and format of the reports shall be as prescribed in section twenty-eight, article three, chapter five-a of this code.

The governor shall transmit copies of the report to the Legislature and lodge a copy of all such reports with the department of archives and history where the same shall be kept as permanent records. All annual reports to the Legislature shall be submitted to the legislative librarian.

The governor may at any time require information in writing, under oath, from any officer, board, department or commission of the executive department or the principal officer or manager of any state institution, upon any subject relating to the condition, management and expense of their respective offices or institutions.
AN ACT to amend and reenact section three, title one, chapter ten, acts of the Legislature, regular session, two thousand, relating to making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution and removing the authority of the auditor to transfer within the general revenue fund certain amounts.

Be it enacted by the Legislature of West Virginia:

That section three, title one, chapter ten, acts of the Legislature, regular session, two thousand, be amended and reenacted to read as follows:

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 it’s “personal services” line item, it’s “employee benefit” line item, it’s “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 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.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor’s office, fund 0101, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; 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 one; 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 one, to fund 0101, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2001 Org 0100

Any unexpended balance remaining in the appropriation for publication of papers and transition expenses - surplus (fund 0101, activity 359) at the close of fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

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 one, by adding two hundred fifty thousand dollars to a new line item for publication of papers and transition expenses, for expenditure during the fiscal year two thousand one.

CHAPTER 12

(H. B. 3235 — By Delegates Michael, Boggs, Browning, Doyle, Warner, Ashley and Fletcher)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office, fund 0101, fiscal year 2001, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; 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 one; 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 one, to fund 0101, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by eight hundred fifty thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 EXECUTIVE
4 5—Governor's Office
5 (WV Code Chapter 5)
6 Fund 0101 FY 2001 Org 0100
Any unexpended balance remaining in the appropriation for unclassified - surplus (fund 0101, activity 097) at the close of fiscal year 2001 is hereby re appropriated for expenditure during the fiscal year 2002.

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 one, by increasing the existing appropriation for personal services by four hundred thousand dollars, employee benefits by one hundred thousand dollars, and unclassified by three hundred fifty thousand dollars, for expenditure during the fiscal year two thousand one.

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**CHAPTER 13**

(H. B. 3247 — By Delegates Cann, Frederick, Keener, R. M. Thompson, Warner, H. White and Stalnaker)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]
appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for the fiscal year 2001; 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 one; 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 one, to fund 0102, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

EXECUTIVE

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2001 Org 0100

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<td>Unclassified - Total - Surplus</td>
<td>$ 50,000</td>
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</tbody>
</table>
The purpose of this bill is to supplement this account in the
budget act for the fiscal year ending the thirtieth day of June,
two thousand one, by increasing the existing appropriation for
unclassified - total by fifty thousand dollars for expenditure
during the fiscal year two thousand one.

CHAPTER 14

(H. B. 3248 — By Delegates Michael, Boggs, Compton, Doyle,
Kominar, Proudfoot, Ashley and Fletcher)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of
the existing appropriations from the state fund, general revenue,
to the department of agriculture, fund 0131, fiscal year 2001,
organization 1400, as originally appointed by chapter ten, acts of
the Legislature, regular session, two thousand, known as the
“Budget Bill”.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund,
general revenue, to the department of agriculture, fund 0131, fiscal
year 2001, organization 1400, be amended and reduced in the existing
line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE
And, that the items of the total appropriations from the state fund, general revenue, to the department of agriculture, fund 0131, fiscal year 2001, organization 1400, be amended and increased in the existing line item as follows:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

*12—Department of Agriculture*  
(WV Code Chapter 19)  
Fund 0131 FY 2001 Org 1400

<table>
<thead>
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<th>General</th>
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<td>6</td>
<td>Unclassified (R)</td>
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</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid account for the designated
spending unit. The item for Moorefield agriculture center (R) (activity 786) is reduced by sixty thousand dollars. The item for unclassified (R) (activity 099) is increased by sixty thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 15

(S. B. 469 — By Senators Tomblin, Mr. President, Anderson, Bailey, Bowman, Chafin, Craigo, Edgell, Facemyer, Helmick, Jackson, Love, McCabe, McKenzie, Minear, Mitchell, Plymale, Prezioso, Sharpe, Snyder and Sprouse)

[Passed April 3, 2001; 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 one, in the amount of three hundred thousand dollars from the secretary of state–ucc account fund, fund 1605, fiscal year 2001, organization 1600, 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 one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600.

WHEREAS, The Legislature finds that the account balance in the secretary of state–ucc account fund, fund 1605, fiscal year 2001, organization 1600, exceeds that which is necessary for the purposes for which the account was established; and
WHEREAS, By the provisions of this legislation, there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the secretary of state-ucc account fund, fund 1605, fiscal year 2001, organization 1600, be decreased by expiring the amount of three hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Title II— Appropriations</th>
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</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
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17—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2001 Org 1600

<table>
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<tr>
<td>Unclassified—Surplus</td>
<td>097</td>
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</table>

The purpose of this supplementary appropriation bill is to expire the sum of three hundred thousand dollars from the secretary of state-ucc account fund, fund 1605, fiscal year 2001, organization 1600, and to supplement the secretary of state, fund 0155, fiscal year 2001, organization 1600, in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by adding three hundred thousand dollars to
the existing appropriation for unclassified for expenditure during fiscal year two thousand one.

CHAPTER 16

(S. B. 706 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 11, 2001; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary transfer of public moneys out of the treasury from the unappropriated surplus balance in other funds, by transferring an amount not to exceed sixty thousand dollars which has accrued or will accrue from the treasurer’s office, tobacco company settlement proceeds, fund 1316, organization 1300, to the department of administration, public employees insurance agency, nonstate health claims fund, fund 2183, organization 0225.

WHEREAS, The money has been recovered from a settlement with the Ligget group, one of the tobacco companies sued by the public employees insurance agency. The lawsuit seeks to recover moneys expended by the public employees insurance agency for treatment of members in its plan for illness related to tobacco use. This money will be used by the public employees insurance agency to pay for medical treatment of public employees insurance agency insureds and legal fees associated with the settlement with the Ligget group; and

WHEREAS, The governor has established that there now remains an unappropriated surplus balance in the treasurer’s office, tobacco
company settlement proceeds, fund 1316, organization 1300, available for transfer; therefore

Be it enacted by the Legislature of West Virginia:

1 That an amount not to exceed sixty thousand dollars which
2 has accrued or will accrue in the unappropriated surplus balance
3 of the treasurer’s office, tobacco company settlement proceeds,
4 fund 1316, organization 1300, be decreased and expired by
5 transferring an amount not to exceed sixty thousand dollars to
6 the department of administration, public employees insurance
7 agency, nonstate health claims fund, fund 2183, organization
8 0225.

9 The purpose of this bill is to decrease and expire a sum not
10 to exceed sixty thousand dollars which has accrued or will
11 accrue in the unappropriated surplus balance in other funds,
12 fund 1316, organization 1300, by transferring an amount not to
13 exceed sixty thousand dollars to fund 2183, organization 0225,
14 to pay for medical treatment of public employees insurance
15 agency insureds and legal fees associated with the settlement
16 with the Ligget group.

CHAPTER 17

(S. B. 480 — By Senators Craigo, Sharpe, Jackson, Chafin,
Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson,
Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]
fund 2040, fiscal year 2001, organization 0201, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of one hundred thousand dollars from the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211.

WHEREAS, The Legislature finds that the account balance in the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211, 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 the funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, to the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211, be decreased by expiring the amount of one hundred thousand dollars to the balance of the department of administration - office of the secretary - natural gas contract refund fund, fund 2040, fiscal year 2001, organization 0201, during the fiscal year two thousand one.

10 The purpose of this bill is to expire the sum of one hundred thousand dollars from the department of administration - division of general services - capitol complex - maintenance, fund 2251, fiscal year 2001, organization 0211, to the balance of the department of administration - office of the secretary - natural gas contract refund fund, fund 2040, fiscal year 2001, organization 0201, for the fiscal year ending the thirtieth day of June, two thousand one, to be available for expenditure during the fiscal year two thousand one.
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 two, in the amount of one million five hundred thousand dollars from the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218.

WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, 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 two, to the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2002, organization 0218, be decreased by expiring the amount of one million five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand two.

9 The purpose of this bill is to expire the sum of one million five hundred thousand dollars from the board of risk and
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 one, in the amount of one million dollars from the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, 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 one, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100.

WHEREAS, The Legislature finds that the account balance in the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is
available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; therefore

_Be it enacted by the Legislature of West Virginia:_

That the balance of funds in the bureau of commerce - West Virginia economic development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, be decreased by expiring the amount of one million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand one, to the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by one million dollars in the line item as follows:

1 **TITLE II — APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **EXECUTIVE**

4 _8-Governor's Office-

5 _Civil Contingent Fund_

6 (WV Code Chapter 5)

7 Fund 0105 FY 2001 Org 0100

8

9

10

11 1 Civil Contingent Fund-Total-Surplus 238 $ 1,000,000

12 The purpose of this bill is to expire the sum of one million dollars from the bureau of commerce - West Virginia economic
development authority - industrial development loans, fund 3148, fiscal year 2001, organization 0307, and to supplement the governor's office - civil contingent fund, fund 0105, fiscal year 2001, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by adding one million dollars to the existing appropriation for civil contingent fund-total-surplus.

CHAPTER 20

(S. B. 707 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 11, 2001; 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 one, in the bureau of commerce, West Virginia development office - office of coalfield community development, fund 3162, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the bureau of commerce, West Virginia development office - office of coalfield community development, fund 3162, fiscal year 2001, organization 0307, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, to fund 3162, fiscal year 2001, organization 0307, be supplemented and amended by increasing the total appropriation by fifty thousand dollars as follows:

1

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

BUREAU OF COMMERCE

182-West Virginia Development Office—

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2001 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</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 one, by adding fifty thousand dollars to the existing appropriation for unclassified total for expenditure during the fiscal year two thousand one.

CHAPTER 21

(H. B. 3257—By Delegates Michael, Browning, Compton, Doyle, Frederick and Leach)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
AN ACT expiring funds to the balance of the family protection services board, domestic violence legal services fund, fund 5455, fiscal year 2001, organization 0511, for the fiscal year ending the thirtieth day of June, two thousand one, in the amount of one hundred fifty thousand dollars from the unappropriated balance in the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507.

WHEREAS, The Legislature finds that the balance in the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507, 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 the family protection services board, domestic violence legal services fund, fund 5455, fiscal year 2001, organization 0511, be increased by expiring to that fund one hundred fifty thousand dollars from the unappropriated balance of the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507, to be available for expenditure during the fiscal year two thousand one.

8 The purpose of this bill is to expire one hundred fifty thousand dollars from the unappropriated balance in the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507, to the balance of the family protection services board, domestic violence legal services fund, fund 5455, fiscal year 2001, organization 0511, for the fiscal year ending the thirtieth day of June, two thousand one, to be available for expenditure during the fiscal year two thousand one.
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 one, in the department of military affairs and public safety, West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2001, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of military affairs and public safety, West Virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2001, organization 0608, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 6362, fiscal year 2001, organization 0608, be supplemented and amended by increasing the total appropriation by fifty-four thousand three hundred eighty-nine dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

148—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2001 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$20,356</td>
</tr>
<tr>
<td>004 Annual Increment</td>
<td>266</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>9,294</td>
</tr>
<tr>
<td>099 Unclassified</td>
<td>24,473</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 one, by adding twenty thousand three hundred fifty-six dollars to the existing appropriation for personal services, two hundred sixty-six dollars to annual increment, nine thousand two hundred ninety-four dollars to employee benefits and twenty-four thousand four hundred seventy-three dollars to unclassified for expenditure during the fiscal year two thousand one.

CHAPTER 23

(H. B. 3256 —By Delegates Michael, Doyle, Leach, Warner, Anderson, Ashley and Hall)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]
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 two, in the amount of seven hundred fifty thousand dollars from the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, 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 two, to the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, 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 two.

9 The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the insurance commissioner — insurance commission fund, fund 7152, fiscal year 2002, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, to be available for appropriation during the fiscal year two thousand two.
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 one, in alcohol beverage control administration, fund 7352, fiscal year 2001, organization 0708, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the alcohol beverage control administration, fund 7352, fiscal year 2001, organization 0708, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 7352, fiscal year 2001, organization 0708, be supplemented and amended by increasing the total appropriation by five hundred thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 170—Alcohol Beverage Control Administration
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 one, by adding five hundred thousand dollars to the existing appropriation for unclassified - total for expenditure during the fiscal year two thousand one.

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 one, in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2001, organization 0906, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.
WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia state board of examiners for licensed practical nurses, fund 8517, fiscal year 2001, organization 0906, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8517, fiscal year 2001, organization 0906, be supplemented and amended by increasing the total appropriation by sixteen thousand dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II — APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
</tbody>
</table>

MISCELLANEOUS BOARDS AND COMMISSIONS

212—WV State Board of Examiners for Licensed Practical Nurses (WV Code Chapter 30)

Fund 8517 FY 2001 Org 0906

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$16,000</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 one, by adding sixteen thousand dollars to the existing appropriation for unclassified for expenditure during the fiscal year two thousand one.
CHAPTER 26

(H. B. 3255 — By Delegates Michael, Doyle, Campbell, Proudfoot, Frederick, Cann and H. White)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

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 two, in the amount of seven hundred fifty thousand dollars from the public service commission, fund 8623, fiscal year 2002, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2002, 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 two, 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 two.

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 2002, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand two, to be available for appropriation during the fiscal year two thousand two.
AN ACT supplementing, amending and reducing items of the existing appropriation to the public service commission, fund 8623, fiscal year 2001, organization 0926, as originally appropriated by chapter ten, acts of the Legislature, regular session, two thousand, 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 2001, organization 0926, be amended and reduced in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$495,000</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 ninety-five thousand dollars.

CHAPTER 28

(S. B. 485 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, in the West Virginia board of examiners for speech-language pathology and audiology, fund 8646, fiscal year 2001, organization 0930, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the West Virginia board of examiners for speech-language pathology and audiology, fund 8646, fiscal year 2001, organization 0930, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8646, fiscal year 2001, organization 0930, be supplemented and amended by increasing the total
appropriation by seven thousand one hundred thirty-five dollars as follows:

1 TITLE II — APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 MISCELLANEOUS BOARDS AND COMMISSIONS
4 219—WV Board of Examiners for Speech-Language Pathology and Audiology
5 (WV Code Chapter 30)
6 Fund 8646 FY 2001 Org 0930
7
8 Activity Other Funds
9 Unclassified - Total . . . . . . . . . . . . . . 096 $ 7,135
10
11 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 one, by adding seven thousand one hundred thirty-five dollars to the existing appropriation for unclassified - total for expenditure during the fiscal year two thousand one.

CHAPTER 29

(S. B. 486 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29; 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 one, in the massage therapy licensure board, fund 8671, fiscal year 2001, organization 0938, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established that there now remains an unappropriated balance in the massage therapy licensure board, fund 8671, fiscal year 2001, organization 0938, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand one; 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 one, fund 8671, fiscal year 2001, organization 0938, be supplemented and amended by increasing the total appropriation by ten thousand dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II — APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>MISCELLANEOUS BOARDS AND COMMISSIONS</td>
</tr>
<tr>
<td>222—Massage Therapy Licensure Board</td>
</tr>
<tr>
<td>(WV Code Chapter 30)</td>
</tr>
<tr>
<td>Fund 8671 FY 2001 Org 0938</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>Unclassified - Total</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 one, by adding ten thousand dollars to the existing appropriation for unclassified total for expenditure during the fiscal year two thousand one.

CHAPTER 30

(S. B. 429 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to the bureau of commerce - West Virginia development office, fund 8705, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8705, fiscal year 2001, organization 0307, be supplemented and amended by increasing the
total appropriation by four hundred twenty-six thousand one hundred forty-seven dollars as follows:

1    TITLE II - APPROPRIATIONS.

2    Section 5. Appropriations of federal funds.

3    BUREAU OF COMMERCE

4    272-West Virginia Development Office

5    (WV Code Chapter 5B)

6    Fund 8705 FY 2001 Org 0307

7    Activity  Federal Funds

8    1 Unclassified-Total ................. 096   $ 426,147

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by four hundred twenty-six thousand one hundred forty-seven dollars for expenditure during fiscal year two thousand one.

CHAPTER 31

(S. B. 430 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to the bureau of commerce - division of labor, fund 8706, fiscal year 2001, organization 0308, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8706, fiscal year 2001, organization 0308, be supplemented and amended by increasing the total appropriation by sixty-five thousand dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 BUREAU OF COMMERCE

4 273-Division of Labor

5 (WV Code Chapters 21 and 47)

6 Fund 8706 FY 2001 Org 0308

7 Activity Federal Funds

8

9 1 Unclassified-Total ..................... 096 $ 65,000
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by sixty-five thousand dollars for expenditure during fiscal year two thousand one.

CHAPTER 32

(S. B. 431 - By Senators Craig, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 3, 2001; 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 one, to the department of military affairs and public safety - division of veterans' affairs - veterans' home, fund 8728, fiscal year 2001, organization 0618, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8728, fiscal year 2001, organization 0618, be supplemented and amended by increasing the
total appropriation by one hundred twenty-five thousand dollars in the line item as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 262—Division of Veterans’ Affairs—

6 Veterans’ Home

7 (WV Code Chapter 9A)

8 Fund 8728 FY 2001 Org 0618

9

10 Activity  Federal

11 1 Unclassified-Total .................. 096  $ 125,000

12 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by one hundred twenty-five thousand dollars for expenditure during fiscal year two thousand one.

CHAPTER 33

(S. B. 432 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 30, 2001; 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 one, to the department of agriculture, fund 8736, fiscal year 2001, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, The governor has established the availability of federal funds for a new program and a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, 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 one, to fund 8736, fiscal year 2001, organization 1400, be supplemented and amended by increasing the total appropriation by two million nine hundred fifty-four thousand dollars as follows:

1 TITLE II - APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

EXECUTIVE

240-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2001 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$2,954,000</td>
</tr>
</tbody>
</table>

096
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by two million nine hundred fifty-four thousand dollars for expenditure during fiscal year two thousand one.

CHAPTER 34

(S. B. 433 — By Senators Craigo, Sharpe, Jackson, Chafin, Preziosi, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to the department of agriculture - meat inspection, fund 8737, fiscal year 2001, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8737, fiscal year 2001, organization 1400, be supplemented and amended by increasing the
total appropriation by eleven thousand seven hundred dollars in the line item as follows:

1. **TITLE II - APPROPRIATIONS.**

2. **Section 5. Appropriations of federal funds.**

3. **EXECUTIVE**

4. **241-Department of Agriculture-**

5. **Meat Inspection**

6. (WV Code Chapter 19)

7. Fund 8737 FY 2001 Org 1400

8. | Activity | Federal Funds |
8. | Unclassified-Total | 096 | $11,700 |

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 one, by increasing the existing appropriation for unclassified-total by eleven thousand seven hundred dollars for expenditure during fiscal year two thousand one.

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**CHAPTER 35**

(S. B. 434 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to the department of military affairs and public safety - West Virginia state police, fund 8741, fiscal year 2001, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8741, fiscal year 2001, organization 0612, be supplemented and amended by increasing the total appropriation by four hundred twenty-three thousand eight hundred seven dollars in the line item as follows:

<table>
<thead>
<tr>
<th></th>
<th>TITLE II - APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Section 5. Appropriations of federal funds.</td>
</tr>
<tr>
<td>3</td>
<td>DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY</td>
</tr>
<tr>
<td>4</td>
<td><em>261-West Virginia State Police</em></td>
</tr>
<tr>
<td>5</td>
<td>(WV Code Chapter 15)</td>
</tr>
<tr>
<td>6</td>
<td>Fund 8741 FY 2001 Org 0612</td>
</tr>
<tr>
<td>8</td>
<td>Act-activity Federal Funds</td>
</tr>
<tr>
<td>9</td>
<td>1 Unclassified-Total ................. 096 $ 423,807</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by four hundred twenty-three thousand eight hundred seven dollars for expenditure during fiscal year two thousand one.

CHAPTER 36

(S. B. 435 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 30, 2001; 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 one, to the public service commission - motor carrier division, fund 8743, fiscal year 2001, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8743, fiscal year 2001, organization 0926, be supplemented and amended by increasing the total appropriation by five hundred fifty thousand two hundred seventy dollars as follows:
TITLE II - APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

279-Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2001 Org 0926

Activity Federal Funds

1 Unclassified-Total ............... 096 $ 550,270

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for unclassified-total by five hundred fifty thousand two hundred seventy dollars for expenditure during fiscal year two thousand one.

CHAPTER 37

(S. B. 701 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed April 11, 2001; 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 one, to the West Virginia development office - community development, fund 8746, fiscal year 2001, organization 0307, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8746, fiscal year 2001, organization 0307, be supplemented and amended by increasing the total appropriation by three million dollars as follows:

1 TITLE II - APPROPRIATIONS.

2 Sec. 6. Appropriations of federal block grants.

3 282-West Virginia Development Office—

4 Community Development

5 Fund 8746 FY 2001 Org 0307

6 Act- Federal

7 ivity Funds

8 1 Unclassified-Total ............... 096 $ 3,000,000

9 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 one, by increasing the
existing appropriation for unclassified-total by three million dollars for expenditure during fiscal year two thousand one.

CHAPTER 38

(S. B. 487 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to the department of transportation - division of motor vehicles, fund 8787, fiscal year 2001, organization 0802, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8787, fiscal year 2001, organization 0802, be supplemented and amended by increasing the total appropriation by three million five hundred sixty-six thousand dollars as follows:
TITLE II — APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

267—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2001 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total</td>
<td>096 $3,566,000</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 one, by increasing the existing appropriation for unclassified-total by three million five hundred sixty-six thousand dollars for expenditure during fiscal year two thousand one.

CHAPTER 39

(S. B. 488 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 30, 2001; 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 one, to the auditor’s office - national white collar crime center, fund 8807, fiscal year 2001, organization 1200, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 one, 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 one, to fund 8807, fiscal year 2001, organization 1200, be supplemented and amended by increasing the total appropriation by three million eight thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

EXECUTIVE

239—Auditor’s Office—

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2001 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$ 3,008,000</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 one, by increasing the existing appropriation for unclassified-total by three million eight thousand dollars for expenditure during fiscal year two thousand one.

CHAPTER 40

(S. B. 489 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; 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 one, to a new item of appropriation designated to the department of education and the arts - office of the secretary, fund 8841, fiscal year 2001, organization 0431, supplementing and amending chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand one, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof the following:

TITLE II — APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

DEPARTMENT OF EDUCATION AND THE ARTS

248a—Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2001 Org 0431

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$ 270,556</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 one, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of two hundred seventy thousand five hundred fifty-six dollars to unclassified - total for expenditure during fiscal year two thousand one.

CHAPTER 41

(S. B. 458 — By Senators Craigo, Sharpe, Jackson, Chafin, Prezioso, Plymale, Love, Helmick, Bowman, Bailey, Anderson, Edgell, Unger, McCabe, Boley, Minear and Sprouse)

[Passed March 29, 2001; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations in the state road fund to the department of transportation, division of highways, fund 9017, fiscal year 2001, organization 0803, as originally appropriated by chapter ten, acts of the Legislature, regular session, two thousand, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated February 14, 2001, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 2000, and further included the estimate of revenues for the fiscal year 2001, less net appropriation balances forwarded and regular appropriations for fiscal year 2001.

WHEREAS, It thus appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand one; 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 2001, 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. 94 – Division of Highways
5. (WV Code Chapters 17 and 17C)
6. Fund 9017 FY 2001 Org 0803
And, that the items of the total appropriations from the state road fund, fund 9017, fiscal year 2001, organization 0803, be amended and increased in the line items as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

94 – Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2001 Org 0803

<table>
<thead>
<tr>
<th>State</th>
<th>Activity</th>
<th>Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>$12,100,000</td>
<td>Maintenance</td>
<td>237</td>
</tr>
<tr>
<td>5,000,000</td>
<td>Maintenance, Contract Paving</td>
<td>272</td>
</tr>
<tr>
<td>12,500,000</td>
<td>Appalachian Programs</td>
<td>280</td>
</tr>
<tr>
<td>5,000,000</td>
<td>Nonfederal Aid Construction</td>
<td>281</td>
</tr>
<tr>
<td>110,000</td>
<td>Highway Litter Control</td>
<td>282</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 Debt Service is reduced by four million eight hundred eighty-nine thousand dollars, Bridge Repair and Replacement is reduced by four million dollars, Equipment Revolving is reduced by five million dollars and Other Federal Aid Programs is reduced by twelve million five hundred thousand dollars. The item Maintenance is increased by twelve million one hundred thousand dollars, Maintenance, Contract Paving and Secondary Road Maintenance is increased by five million dollars, Appalachian Programs is increased by twelve million five hundred thousand dollars, Nonfederal Aid Construction is increased by five million dollars, and Highway Litter Control is increased by one hundred ten thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, two thousand one shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 42

(H. B. 2772 —By Delegates Manuel, Spencer, Pino, Givens and Wills)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]
That section thirty-four, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.

The auditor shall appoint for each county in the state a deputy commissioner of delinquent and nonentered lands. Persons serving in that capacity when this article takes effect shall continue to serve, subject to the provisions of this article. The auditor shall make new appointments from time to time thereafter whenever vacancies occur, or when in the auditor's judgment it is deemed advisable. The auditor may promulgate rules respecting the tenure of deputy commissioners. In the absence of such rules, the deputy commissioner for each county shall, so long as he satisfies the requirements of this section in respect to professional qualifications and bonding, continue to act without reappointment until the auditor designates his successor.

The auditor shall appoint deputy commissioners in such numbers and to serve such counties as the auditor deems advisable to effect the purposes of this article. Appointments, other than an employee of the auditor's office, shall be limited to persons duly licensed to practice law in this state. Any person appointed as deputy commissioner for a single county shall reside in said county. Any person appointed as deputy commissioner for more than one county shall reside in one of the counties for which he has been appointed.

Whenever in respect to any land the deputy commissioner, in his own judgment or in the opinion of the auditor, is disqualified or otherwise unable to serve, because of his personal
interest, or because of his representation of clients in matters affecting such land, or because of vacancies or failure to act, the auditor may appoint an employee of his office to assume all of the disqualified deputy commissioner's rights, duties, responsibilities and liabilities relating to such land.

The deputy commissioner shall be subject to the orders and control of the auditor, shall be accountable to him, and shall serve as his local agent within the county. It shall be his duty to do whatever is required of him by the auditor or by the provisions of this article. The deputy commissioner before entering upon his duties shall give a bond, with satisfactory corporate surety, conditioned upon the faithful performance of his duties and the payment of any forfeitures incurred. The penalty of such bond shall be not less than twenty-five thousand dollars nor more than one hundred thousand dollars, as the auditor may direct. The premium therefor shall be paid by the auditor out of the operating fund for the land department in his office.

CHAPTER 43

(Com. Sub. for S. B. 418 — Senators McCabe and Kessler)

[Passed April 13, 2001; to take effect July 1, 2001. Approved by the Governor.]
bonds are for the benefit of consumers; extending the time to pass
upon a license application to ninety days; allowing the commis-
sioner to retain fees to cover administrative costs in the event an
application is denied; increasing license fee; imposing a per-loan
fee; increasing bond for certain brokers; requiring certain
disclosures and recordkeeping; requiring continuing education for
loan originators employed by licensed brokers; requiring appli-
cants to pay the cost of fingerprint processing; and authorizing the
commissioner to impose fines and waive certain license applica-
tion requirements for nonprofits.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, seven, eight, nine, twelve
and fourteen, article seventeen, chapter thirty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted, all to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER,
BROKER AND SERVICER ACT.

§31-17-1. Definitions and general provisions.
§31-17-2. License required for lender or broker; exemptions.
§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and
reductions; per-loan fee.
§31-17-5. Refusal or issuance of license.
§31-17-6. Minimum net worth to be maintained; bond to be kept in full force and
effect; foreign corporation to remain qualified to do business in this
state.
§31-17-7. Form of license; posting required; license not transferable or assignable;
license may not be franchised; renewal of license.
§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum
points, fees and charges; overriding of federal limitations; limitations
on lien documents; prohibitions on primary and subordinate mortgage
loans; civil remedy.
§31-17-9. Disclosure; closing statements; other records required; record-keeping
requirements.
§31-17-12. Grounds for suspension or revocation of license; suspension and
revocation generally; reinstatement or new license.
§31-17-14. Hearing before commissioner; provisions pertaining to hearing.
§31-17-1. Definitions and general provisions.

As used in this article:

(1) "Primary mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a primary mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families;

(2) "Subordinate mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages or deeds of trust;

(3) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

(4) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five primary or subordinate mortgage loans in any one calendar year;

(5) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates, processes or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, or
31 originates, processes or assigns any primary or subordinate
32 mortgage loans in any one calendar year; or if he or she seeks
33 to charge a borrower or receive from a borrower money or other
34 valuable consideration in any primary or subordinate mortgage
35 transaction before completing performance of all broker
36 services that he or she has agreed to perform for the borrower;

37 (6) “Brokerage fee” means the fee or commission or other
38 consideration charged by a broker for the services described in
39 subdivision (5) of this section;

40 (7) “Additional charges” means every type of charge arising
41 out of the making or acceptance of a primary or subordinate
42 mortgage loan, except finance charges, including, but not
43 limited to, official fees and taxes, reasonable closing costs and
44 certain documentary charges and insurance premiums and other
45 charges which definition is to be read in conjunction with and
46 permitted by section one hundred nine, article three, chapter
47 forty-six-a of this code;

48 (8) “Finance charge” means the sum of all interest and
49 similar charges payable directly or indirectly by the debtor
50 imposed or collected by the lender incident to the extension of
51 credit as coextensive with the definition of “loan finance
52 charge” set forth in section one hundred two, article one,
53 chapter forty-six-a of this code;

54 (9) “Commissioner” means the commissioner of banking of
55 this state;

56 (10) “Applicant” means a person who has applied for a
57 lender’s or broker’s license;

58 (11) “Licensee” means any person duly licensed by the
59 commissioner under the provisions of this article as a lender or
60 broker;
(12) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article;

(13) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren; and

(14) "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect
or remit for another lender, note owner or noteholder, payments of principal, interest, including sales finance charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to a residential mortgage loan.

§31-17-2. License required for lender or broker; exemptions.

(a) No person shall engage in this state in the business of lender or broker unless and until he or she shall first obtain a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation shall engage in business in this state unless it is registered with the secretary of state to transact business in this state.

(b) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or
(7) Habitat for Humanity International, Inc. and its affiliates providing low-income housing within this state.

Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(c) A person or entity designated in subsection (b) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(d) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

(a) Application for a lender’s or broker’s license shall each year be submitted in writing under oath, in the form prescribed
by the commissioner, and shall contain the full name and
address of the applicant and, if the applicant is a partnership,
limited liability company or association, of every member
thereof, and, if a corporation, of each officer, director and
owner of ten percent or more of the capital stock thereof and
further information as the commissioner may reasonably
require. Any application shall also disclose the location at
which the business of lender or broker is to be conducted.

(b) At the time of making application for a lender's license,
the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the
secretary of state certifying that the applicant is registered with
the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the
operation of the business at the location specified in the
application net worth of at least two hundred fifty thousand
dollars;

(3) File with the commissioner a bond in favor of the state
for the benefit of consumers in the amount of one hundred
thousand dollars, in a form and with conditions as the commis-
sioner may prescribe, and executed by a surety company
authorized to do business in this state;

(4) Pay to the commissioner a license fee of one thousand
two hundred fifty dollars plus the actual cost of fingerprint
processing. If the commissioner shall determine that an
investigation outside this state is required to ascertain facts or
information relative to the applicant or information set forth in
the application, the applicant may be required to advance
sufficient funds to pay the estimated cost of the investigation.
An itemized statement of the actual cost of the investigation
outside this state shall be furnished to the applicant by the
commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(c) At the time of making application for a broker’s license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the secretary of state certifying that the applicant is registered with the secretary of state to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least ten thousand dollars;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers in the amount of twenty-five thousand dollars, in a form and with conditions as the commissioner may prescribe, and executed by a surety company authorized to do business in this state: **Provided,** That the bond must be in the amount of fifty thousand dollars before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of three hundred fifty dollars plus the actual cost of fingerprint processing; and

(5) Submit proof that the applicant is a business in good standing in its state of incorporation, or if not a corporation, its state of business registration, and a full and complete disclosure
of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(d) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(e) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(f) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for nonprofit corporations whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD established median income for their area of residence.

(g) Every licensee shall pay a fee of five dollars for each residential mortgage loan originated, made or brokered in a calendar year. This fee shall be paid semiannually to the division of banking and remitted with the report required pursuant to subsection (b), section eleven of this article for loans made, brokered or originated during the last six months of the previous calendar year and with the license renewal application required pursuant to subsection (b), section seven of this article for the loans made, brokered or originated in the first six months of that calendar year. In the event a licensee ceases operation, it shall remit any fees due since the last reporting period when it relinquishes its license.

§31-17-5. Refusal or issuance of license.
(a) Upon an applicant's full compliance with the provisions of section four of this article, the commissioner shall investigate the relevant facts with regard to the applicant and his or her application for a lender's or broker's license, as the case may be. Upon the basis of the application and all other information before him or her, the commissioner shall make and enter an order denying the application and refusing the license sought if the commissioner finds that:

1. The applicant does not have available the net worth required by the provisions of section four of this article;

2. The financial responsibility, character, reputation, experience or general fitness of the applicant, including its officers, directors, principals and employees, reasonably warrants the belief that the business will not be operated lawfully and properly in accordance with the provisions of this article;

3. The applicant has done any act or has failed or refused to perform any duty or obligation for which the license sought could be suspended or revoked were it then issued and outstanding.

Otherwise, the commissioner shall issue to the applicant a lender's or broker's license which shall entitle the applicant to engage in the business of lender or broker, as the case may be, during the period, unless sooner suspended or revoked, for which the license is issued.

(b) Every application for a lender's or broker's license shall be passed upon and the license issued or refused within ninety days after the applicant therefor has fully complied with the provisions of section four of this article. Under no circumstances whatever shall a person or licensee act as a broker and lender in the same transaction. Whenever an application for a
lender’s or broker’s license is denied and the license sought is refused, which refusal has become final, the commissioner shall retain all fees to cover administrative costs of processing the broker or lender application.

§31-17-6. Minimum net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.

At all times, a licensee shall: (1) Have available the net worth required by the provisions of section four of this article; (2) keep the bond required by said section in full force and effect; and (3) if the licensee be a foreign corporation, remain qualified to transact business in this state unless otherwise exempt.

§31-17-7. Form of license; posting required; license not transferable or assignable; license may not be franchised; renewal of license.

(a) It shall be stated on the license, whether it is a lender’s or broker’s license, the location at which the business is to be conducted and the full name of the licensee. A broker’s license shall be conspicuously posted in the licensee’s place of business in this state and a lender’s license shall be conspicuously posted in the licensee’s place of business if in this state. No license shall be transferable or assignable. No licensee may offer a franchise under that license to another person. The commissioner may allow licensees to have branch offices without requiring additional licenses provided the location of all branch offices is registered with the division of banking by the licensee. Whenever a licensee changes his or her place of business to a location other than that set forth in his or her license and branch registration, he or she shall give written notice thirty days prior to such change to the commissioner.
(b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire on the thirty-first day of December of each year and any license may be renewed each year in the same manner, for the same license fee or fees specified above and upon the same basis as an original license is issued in accordance with the provisions of section five of this article. All applications for the renewal of licenses shall be filed with the commissioner at least ninety days before the expiration thereof.

(c) The amendments to this article in the year two thousand are effective on and after the first day of July, two thousand. Licenses previously issued and in effect on the first day of July, two thousand, shall be extended for one year and, unless sooner suspended or revoked, shall expire on the thirty-first day of December, two thousand one. Any person, not already licensed, who is operating as a broker or lender on the first day of July, two thousand, and who is registered with the secretary of state to do business in the state, may file an application with the commissioner on or before the first day of August, two thousand. If issued, such licenses shall, unless sooner suspended or revoked, expire on the thirty-first day of December, two thousand one.

(d) Beginning with renewal applications in the year two thousand two, a broker's license may not be renewed unless that licensee's executive officer certifies to the commissioner on the renewal application that every loan originator employed by that licensed broker has received at least seven hours of continuing education in the prior year. The continuing education must be related to the laws and regulations applicable to residential mortgage loan origination. Both the course of instruction and the entity providing such continuing education must receive prior approval from the commissioner as satisfying the continuing education requirement established herein before the commissioner may accept a certification from a licensee. The
§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed eighteen percent per year on the unpaid balance of the amount financed.

(b) A borrower shall have the right to prepay his or her debt, in whole or in part, at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by section one hundred nine, article three, chapter forty-six-a of this code and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made.

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again by the same or affiliated licensee in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower’s circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner.
and maintain such documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section shall apply.

(e) Notwithstanding other provisions of this section, a delinquent charge or “late charge” may be charged on any installment made ten or more days after the regularly scheduled due date in accordance with section one hundred twelve or one hundred thirteen, article three, chapter forty-six-a of this code, whichever is applicable. The charge may be made only once on any one installment during the term of the primary or subordinate mortgage loan.

(f) Hazard insurance may be required by the lender and other types of insurance may be offered as provided in section one hundred nine, article three, chapter forty-six-a of this code. The charges for any insurance shall not exceed the standard rate approved by the insurance commissioner for the insurance. Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be furnished to the borrower within thirty days from and after the date of application therefor by the borrower.

(g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches and credit reports, no application fee may be allowed whether or not the mortgage loan is consummated; however, the borrower may be required to reimburse the licensee for actual expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:
(1) The borrower’s willful failure to close the loan; or

(2) The borrower’s false or fraudulent representation of a material fact which prevents closing of the loan as proposed.

(h) No licensee shall make, offer to make, accept or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) No licensee shall induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) No instrument evidencing or securing a primary or subordinate mortgage loan shall contain:

(1) Any power of attorney to confess judgment;

(2) Any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date;

(4) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or
(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

(I) No licensee shall make or broker revolving loans secured by a primary or subordinate mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, no licensee may, and no primary or subordinate mortgage lending transaction may, contain terms which:

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: Provided, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;
(2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being offered as security according to an application for a primary or subordinate mortgage loan;

(3) Make or assist in making any primary or subordinate mortgage loan with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: Provided, That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(4) Require the borrower to pay, in addition to any periodic interest, combined fees, compensation, yield spread premium or points of any kind to the lender and broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, six percent of the loan amount financed: Provided, That reasonable closing costs, as defined in section one hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may not be included within this limitation: Provided, however, That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed: Provided further, That if no yield spread premium is charged, the aggregate of periodic interest, fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points are permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregula-
tion and Monetary Control Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations contained in this section applies;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision may not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of a new residential dwelling or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the broker or lender does not have actual knowledge that the value is incorrect;

(9) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction; or

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate
mortgage loans, including, without limitation, chapter forty-six-
a of this code.

§31-17-9. Disclosure; closing statements; other records required;
record-keeping requirements.

(a) Any licensee or person making on his or her own behalf,
or as agent, broker or in other representative capacity on behalf
of any other person, a primary or subordinate mortgage loan
shall at the time of the closing furnish to the borrower a
complete and itemized closing statement which shall show in
detail:

(1) The amount and date of the note or primary and
subordinate mortgage loan contract and the date of maturity;

(2) The nature of the security;

(3) The finance charge rate per annum and the itemized
amount of finance charges and additional charges;

(4) The principal and total of payments;

(5) Disposition of the principal;

(6) A description of the payment schedule;

(7) The terms on which additional advances, if any, will be
made;

(8) The charge to be imposed for past-due installment;

(9) A description and the cost of insurance required by the
lender or purchased by the borrower in connection with the
primary or subordinate mortgage loan;

(10) The name and address of the borrower and of the
lender; and
(11) That the borrower may prepay the primary or subordinate mortgage loan, in whole or in part, on any installment date and that the borrower will receive a rebate in full for any unearned finance charge.

Such detailed closing statement shall be signed by the broker, lender or closing representative and a completed and signed copy thereof is retained by the broker or lender and made available at all reasonable times to the borrower, the borrower's successor in interest to the residential property or the authorized agent of the borrower or the borrower's successor, until the time as the indebtedness is satisfied in full. Providing a HUD 1 or HUD 1A settlement statement that provides the disclosures required by this subsection and the residential mortgage disclosures required by federal law is considered to meet the requirements of this subsection.

The commissioner may, from time to time, by rules prescribe additional information to be included in a closing statement.

(b) Upon written request from the borrower, the holder of a primary or subordinate mortgage loan instrument shall deliver to the borrower, within ten business days from and after receipt of the written request, a statement of the borrower's account as required by subsection two, section one hundred fourteen, article two, chapter forty-six-a of this code.

(c) Upon satisfaction of a primary or subordinate mortgage loan obligation in full, the holder of the instrument evidencing or securing the obligation shall comply with the requirements of section one, article twelve, chapter thirty-eight of this code in the prompt release of the lien which had secured the primary or subordinate mortgage loan obligation.
(d) Upon written request or authorization from the borrower, the holder of a primary or subordinate mortgage loan instrument shall send or otherwise provide to the borrower or his or her designee, within three business days after receipt of the written request or authorization, a payoff statement of the borrower’s account. Except as provided by this subsection, no charge may be made for providing the payoff statement. Charges for the actual expenses associated with using a third-party courier delivery or expedited mail delivery service may be assessed when this type of delivery is requested and authorized by the borrower following disclosure to the borrower of its cost. The payoff information is provided by mail, telephone, courier, facsimile or other transmission as requested by the borrower or his or her designee.

(e) A licensee shall keep and maintain for thirty-six months after the date of final entry the business records regarding residential mortgage loans applied for, brokered, originated or serviced in the course of its business.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.

(a) The commissioner may suspend or revoke any license issued hereunder if he or she finds that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of the licensee:

(1) Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article; or

(2) Has knowingly made any material misstatement in the application for the license; or
(3) Does not have available the net worth required by the provisions of section four of this article; or

(4) Has failed or refused to keep the bond required by section four of this article in full force and effect; or

(5) In the case of a foreign corporation, does not remain qualified to do business in this state; or

(6) Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of any mortgage loan transaction in this state to anyone entitled to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or any other quality indicating that the business of the licensee in this state has not been or will not be conducted honestly or fairly within the purpose of this article. It shall be a demonstration of bad faith and an unfair or deceptive act or practice to engage in a pattern of making loans where the consumer has insufficient sources of income to timely repay the debt and the lender had the primary intent to acquire the property upon default rather than to derive profit from the loan. This section may not limit any right the consumer may have to bring an action for a violation of section one hundred four, article six, chapter forty-six-a of this code in an individual case.

The commissioner may also suspend or revoke the license of a licensee if he or she finds the existence of any ground upon which the license could have been refused or any ground which would be cause for refusing a license to the licensee were he or she then applying for the same. The commissioner may also suspend or revoke the license of a licensee pursuant to his or her authority under section thirteen, article two, chapter thirty-one-a of this code.
(b) The suspension or revocation of the license of any licensee shall not impair or affect the obligation of any preexisting lawful mortgage loan between the licensee and any obligor.

(c) The commissioner may reinstate a suspended license, or issue a new license to a licensee whose license has been revoked, if the grounds upon which any license was suspended or revoked have been eliminated or corrected and the commissioner is satisfied that the grounds are not likely to recur.

(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding one thousand dollars upon any lender or broker required to be licensed under this chapter who the commissioner determines has violated any of the provisions of this chapter. For the purposes of this section, each separate violation is subject to the fine or penalty herein prescribed and each day after the date of notification, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a mortgage lender or broker shall constitute a separate violation.

§31-17-14. Hearing before commissioner; provisions pertaining to hearing.

(a) Any applicant or licensee, as the case may be, adversely affected by an order made and entered by the commissioner in accordance with the provisions of section thirteen of this article, if not previously provided the opportunity to a hearing on the matter, may in writing demand a hearing before the commissioner. The commissioner may appoint a hearing examiner to conduct the hearing and prepare a recommended decision. The written demand for a hearing must be filed with the commissioner within thirty days after the date upon which the applicant or licensee was served with a copy of the order. The timely filing of a written demand for hearing shall stay or suspend
execution of the order in question, pending a final determination, except for an order suspending a license for failure of the licensee to maintain the bond required by section four of this article in full force and effect. If a written demand is timely filed as aforesaid, the aggrieved party is entitled to a hearing as a matter of right.

(b) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of the article were set forth in extenso in this subsection.

(c) For the purpose of conducting any such hearing hereunder, the commissioner or appointed hearing examiner 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. All subpoenas and subpoenas duces tecum are issued and served in the manner, within the time and for the fees and shall be enforced, as specified in the section, and all of the section provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) Any hearing shall be held within twenty days after the date upon which the commissioner received the timely written demand therefor unless there is a postponement or continuance. The commissioner or hearing examiner may postpone or continue any hearing on his or her own motion or for good cause shown upon the application of the aggrieved party. At any hearing, the aggrieved party may represent himself or herself or be represented by any attorney-at-law admitted to practice before any circuit court of this state.
(e) After the hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming, modifying or vacating his or her earlier order, or shall make and enter an order as is considered appropriate, meet and proper. If the commissioner appoints a hearing examiner then the commissioner must issue his or her final order within fifteen days of receiving the recommended decision of the hearing examiner. The order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon the aggrieved party and his or her attorney of record, if any, in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served. The order of the commissioner is final unless vacated or modified on judicial review thereof in accordance with the provisions of section fifteen of this article.

CHAPTER 44

(S. B. 416 — By Senators Minard and Kessler)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of money transmission services; defining terms; currency transmission; money transmission; and providing that engaging in the business of currency exchange includes making such
services available to West Virginia citizens via an internet website.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

§32A-2-2. License required.

§32A-2-1. Definitions.

1 (1) "Commissioner" means the commissioner of banking of this state.

2 (2) "Check" or "payment instrument" means any check, traveler's check, draft, money order or other instrument for the transmission or payment of money whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

3 (3) "Currency" means a medium of exchange authorized or adopted by a domestic or foreign government.

4 (4) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of
West Virginia are not currency exchange transactions: Provided, That they are not reportable as currency exchange transactions under federal laws and regulations.

(5) “Currency exchange, transportation, transmission business” means a person who is engaging in currency exchange, currency transportation or currency transmission as a service or for profit.

(6) “Currency transmission” or “money transmission” means engaging in the business of selling or issuing checks or the business of receiving currency or the payment of money by any means for the purpose of transmitting that currency, payment of money or its equivalent by wire, facsimile or other electronic means, or through the use of a financial institution, financial intermediary, the federal reserve system or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value cards which are intended for general acceptance and used in commercial or consumer transactions.

(7) “Currency transportation” means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(8) “Licensee” means a person licensed by the commissioner under this article.

(9) “Money order” means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller, the purchaser or remitter, or some other person.
(10) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(11) "Principal" means a licensee's owner, president, senior officer responsible for the licensee's business, chief financial officer or any other person who performs similar functions or who otherwise controls the conduct of the affairs of a licensee. A person controlling ten percent or more of the voting stock of any corporate applicant is a principal under this provision.

(12) "Securities" means all bonds, debentures or other evidences of indebtedness: (a) Issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by the other state and if the other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district or municipality in this state, issued pursuant to law and payable from ad valorem taxes levied on all of the taxable property located therein, if the county, school district or municipality is not in default in the payment of any part of the principal or interest on any debt evidenced by its bonds, debentures or other evidences of indebtedness.

§32A-2-2. License required.

(a) Except as provided by section three of this article, a person may not engage in the business of currency exchange, transportation or transmission in this state without a license issued under this article. For purposes of this article, a person is considered to be engaging in those businesses in this state if
he or she makes available, from a location inside or outside this state, an internet website West Virginia citizens may access in order to enter into those transactions by electronic means.

(b) Any person who was previously licensed as a check seller under this chapter who holds a valid license on the effective date of this article shall be issued a provisional license under this article without the need of an additional application and fee. This provisional license shall expire upon six months of its issuance, during which time the licensee may continue to conduct its check selling business, provided that it maintains the net worth and security required under its previous license. The commissioner may require the licensee to obtain expanded bond coverage consistent with this article for the protection of purchasers of money transmission services and currency exchange services, as well as for covered currency transportation services, when the licensee conducts one or more of these businesses. At the expiration of a provisional license granted by this section, any person who wishes to continue to engage in any business regulated in this article shall apply for a license and meet the criteria under the provisions of this article. A provisional license granted by this section may upon hearing be suspended or revoked by the commissioner for good cause shown.

CHAPTER 45

(S. B. 586 — By Senator Tomblin, Mr. President)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section fifteen, article fifteen-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to competitive bids; and raising the threshold for bids on infrastructure construction projects.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article fifteen-a, 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 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.

(a) No project or infrastructure project acquired, constructed, maintained or financed, in whole or in part, by the water development authority shall be considered to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code as a result of the financing.

(b) The state and its subdivisions shall, except as provided in subsection (c) of this section, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost.

Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project.
(c) This section does not:

(1) Apply to work performed on construction or repair projects not exceeding a total cost of fifty thousand dollars by regular full-time employees of the state or its subdivisions: Provided, That no more than fifty thousand dollars shall be expended on an individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational schools from being used in the construction or repair projects when such use is a part of the students’ training program;

(3) Apply to emergency repairs to building components and systems: Provided, That the term “emergency repairs” means repairs that, if not made immediately, will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems; or

(4) Apply to any situation where the state or a subdivision of the state comes to an agreement with volunteers, or a volunteer group, by which the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

(d) The provisions of subsection (b) of this section do not apply to privately owned projects or infrastructure projects constructed on lands not owned by the state or a subdivision of the state.
AN ACT to amend and reenact section six, article one-h, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to broadening the permissive use of the Camp Dawson morale, welfare and recreation facilities to include additional government employees.

Be it enacted by the Legislature of West Virginia:

That section six, article one-h, 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 1H. MORALE, WELFARE AND RECREATION FACILITIES.

§15-1H-6. Limitation on sales.

1 Use of the morale, welfare and recreation facilities provided for in this article are limited to:

2 (1) Active and reserve component members of the armed forces of the United States;

3 (2) Persons retired from the armed forces of the United States;

4 (3) Dependents of service members or retirees;

5 (4) Civilian employees of the United States; and

6 (5) Employees of the state of West Virginia.
CHAPTER 47

(S. B. 695 — By Senator Prezioso, By Request)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article five-h of said chapter, all relating to administrative appeals of civil assessments, license limitations, suspensions or revocations concerning personal care homes and residential board and care homes; and providing an informal and formal appeal process.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twelve, article five-h of said chapter be amended and reenacted, all to read as follows:

Article
5D. Personal Care Homes.
5H. Residential Board and Care Homes.

ARTICLE 5D. PERSONAL CARE HOMES.

§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article may request a formal or informal hearing with the director or program manager in order to contest the order as contrary to
law or unwarranted by the facts or both. If the contested matter is not resolved at the informal hearing, the licensee or applicant may request a formal hearing before the director. An informal hearing is not a prerequisite for requesting a formal hearing.

(b) Informal hearings shall be held within twenty business days of the director’s receipt of timely request for appeal, unless the licensee or applicant consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives a timely request for appeal. Neither the licensee or applicant nor the director may be represented by an attorney at the informal hearing. Within ten business days of the conclusion of the informal hearing the director, program manager or designee shall issue an informal hearing order, including the basis for the decision. If the order is not favorable to the licensee or applicant, the licensee or applicant may request an appeal and a formal hearing. The director shall notify the administrative hearing examiner of the request for appeal within five business days of receiving the request for an appeal and a formal hearing.

(c) If the applicant or licensee requests a formal hearing without a prior informal hearing, or if an applicant or licensee appeals the order issued as a result of the informal hearing, the director shall proceed in accordance with the department’s rules of procedure for contested case hearings and declaratory rulings and the pertinent provisions of article five, chapter twenty-nine-a of this code.

(d) Following a formal hearing, the director shall make and enter a written order either dismissing the complaint or taking other action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and
accompanying findings and conclusions shall be served upon
the licensee and his or her attorney of record, if any, by certified
mail, return receipt requested. If the director suspends a
personal care home's license, the order shall also specify the
conditions giving rise to the suspension, to be corrected by the
licensee during the period of suspension in order to entitle the
licensee to reinstatement of the license. If the director revokes
a license, the director may stay the effective date of revocation
by not more than ninety days upon a showing that the delay is
necessary to assure appropriate placement of residents. The
order of the director shall be final unless vacated or modified
upon judicial review of the order in accordance with the
provisions of section thirteen of this article.

(e) In addition to all other powers granted by this chapter,
the director may hold the case under advisement and make a
recommendation as to requirements to be met by the licensee in
order to avoid either suspension or revocation. In such a case,
the director shall enter an order accordingly and so notify the
licensee and his or her attorney of record, if any, by certified
mail, return receipt requested. If the licensee meets the require-
ments of the order, the director shall enter an order showing
satisfactory compliance and dismissing the complaint and shall
so notify the licensee and the licensee's attorney of record, if
any, by certified mail, return receipt requested.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-12. Administrative appeals for civil assessments, license
limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued
pursuant to sections five, six, ten or eleven of this article may
request a formal or informal hearing with the director or the
program manager in order to contest the order as contrary to
law or unwarranted by the facts or both. If the contested matter
is not resolved at the informal hearing, the licensee or applicant
may request a formal hearing before the director. An informal hearing is not a prerequisite for requesting a formal hearing.

(b) Informal hearings shall be held within twenty business days of the director’s receipt of timely request for appeal, unless the licensee or applicant consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives a timely request for appeal. Neither the licensee or applicant nor the director may be represented by an attorney at the informal hearing. Within ten business days of the conclusion of the informal hearing the director, program manager or designee shall issue an informal hearing order, including the basis for the decision. If the order is not favorable to the licensee or applicant, the licensee or applicant may request an appeal and a formal hearing. The director shall notify the administrative hearing examiner of the request for appeal within five business days of receiving the request for an appeal and a formal hearing.

(c) If the applicant or licensee requests a formal hearing without a prior informal hearing or if an applicant or licensee appeals the order issued as a result of the informal hearing, the director shall proceed in accordance with the department’s rules of procedure for contested case hearings and declaratory rulings and the pertinent provisions of article five, chapter twenty-nine-a of this code.

(d) Following the formal hearing, the director shall make and enter a written order either dismissing the complaint or taking other action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code and a copy of the order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by certified
mail, return receipt requested. If the director suspends a residential board and care home’s license, the order shall also specify the conditions giving rise to the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a showing that the delay is necessary to assure appropriate placement of residents. The order of the director shall be final unless vacated or modified upon judicial review of the order in accordance with the provisions of section thirteen of this article.

(e) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of the order, the director shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee’s attorney of record, if any, by certified mail, return receipt requested.

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CHAPTER 48

(Com. Sub. for S. B. 694 — By Senator Prezioso, By Request)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
a new article, designated article five-t, relating to the establishment of the care home advisory board; report to governor and Legislature; specifying board membership; meetings of the board; members entitled to expenses; and sunset of board in two thousand three.

*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-t, to read as follows:

**ARTICLE 5T. CARE HOME ADVISORY BOARD.**

§16-5T-1. Care home advisory board created; membership; terms; meetings; compensation; termination.

1 (a) The care home advisory board is hereby created to gather information concerning personal care homes, as defined and regulated in article five-d of this chapter, and residential board and care homes, as defined and regulated in article five-h of this chapter, and make its findings and recommendations to the governor and the Legislature.

(b) The care home advisory board will have seven members: The president of the Senate or his or her designee; the speaker of the House of Delegates or his or her designee; the secretary of the department of health and human resources or his or her designee; an operator of a personal care home licensed in this state; an operator of a residential board and care home licensed in this state; and two members of the public at large, one of which shall be an advocate for consumer rights.

(c) The governor shall appoint the members to the board, by and with the advice and consent of the Senate. Appointments under the provision of this article shall be for a three-year term or the unexpired term, except in the initial appointments as
follows: One citizen member shall be appointed for a two-year term; one citizen member shall be appointed for a three-year term; and the care home operator members shall be appointed for a one-year term. Subsequent appointments to the committee shall be for three year terms. No member shall serve more than two successive terms.

(d) The advisory board shall meet at least four times annually at the times and places in the state that it determines. A majority of the members constitutes a quorum for the purpose of conducting business. The secretary of the department of health and human resources or his or her designee shall serve as chair of the advisory board.

(e) Members of the advisory board are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties, which shall be paid from the funds of the department of health and human resources.

(f) Pursuant to the provisions of article ten, chapter four of this code, the care home advisory board shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 49

(H. B. 2903 — By Delegates DeLong, Douglas, Cann and Swartzmiller)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections one, two, three and eight, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including on a central registry those persons who have abused, neglected or committed other crimes against persons who are adults receiving behavioral health services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

§ 15-2C-2. Central abuse registry; required information; procedures.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.


*§15-2C-1. Definitions.

The following words when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in section three, article one, chapter forty-nine of this code, and shall include any act with respect to a child which is a crime against the person pursuant

*Clerk's Note: This section was also amended by H. B. 3049 (Chapter 50), which passed subsequent to this act.
to article two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d of chapter sixty-one, and any offense with respect to a child which is enumerated in section three of this article.

(c) "Abuse or neglect of an incapacitated adult" means "abuse" "neglect" and "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated adult which is enumerated in section three of this article.

(d) "Adult receiving behavioral health services" means a person over the age of eighteen years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by medicaid or medicare.

(e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) "Residential care facility" means any facility where a child or an incapacitated adult or adult receiving behavioral health services resides which is subject to registration, licensure or certification by the department of health and human resources, and shall include nursing homes, personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes and intermediate care facilities for the mentally retarded.

(g) "Misappropriation of property" means any act which is a crime against property under article three, chapter sixty-one
of this code with respect to a child in a residential care facility
or an incapacitated adult or an adult receiving behavioral health
services in a residential care facility or a child or an incapacitated
adult or adult receiving behavioral health services who is
a recipient of home care services.

(h) "Home care" or "home care services" means services
provided to children or incapacitated adults or an adult receiving
behavioral health services in the home through a hospice
provider, a community care provider, a home health agency,
through the medicaid waiver program, or through any person
when that service is reimbursable under the state medicaid
program.

(i) "Requester" means any residential care facility, any state
licensed day care center, or any provider of home care services
or provider of behavioral health services providing to the
central abuse registry the name of an individual and other
information necessary to identify that individual, and either: (1)
Certifying that the individual is being considered for employ-
ment by the requester or for a contractual relationship with the
requester wherein the individual will provide services to a child
or an incapacitated adult or an adult receiving behavioral health
services for compensation; or (2) certifying that an allegation
of abuse, neglect or misappropriation of property has been
made against the individual.

§15-2C-2. Central abuse registry; required information; procedures.

(a) The criminal identification bureau of the West Virginia
state police shall establish a central abuse registry, to contain
information relating to criminal convictions involving child
abuse or neglect, abuse or neglect of an incapacitated adult or
an adult receiving behavioral health services and misappropriation
of property by individuals specified in subsection (b) of
(b) The central abuse registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual’s employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section three of this article with respect to a child or an incapacitated adult or an adult receiving behavioral health services; and information relating to all individuals required to register with the West Virginia state police as sex offenders pursuant to the provisions of article twelve, chapter fifteen of this code. The central abuse registry shall contain the following information:

(1) The individual’s full name;

(2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;

(3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services;

(4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a day care center, or of a child or an incapacitated adult or an adult receiving behavioral health services receiving home care services, sufficient information to identify the location where the documentation of any investigation by the department of
(5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.

(c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult or an adult receiving behavioral health services, the individual so convicted shall be placed on the central abuse registry.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

(a) The central abuse registry shall maintain information relating to child abuse or neglect, abuse or neglect of an incapacitated adult or adult receiving behavioral health services, and misappropriation of property with respect to individuals convicted of certain offenses pursuant to this code, when the victim of the crime is a child or an incapacitated adult or an adult receiving behavioral health services, to include:

(1) First or second degree murder pursuant to section one, article two, chapter sixty-one of this code;

(2) Voluntary manslaughter pursuant to section four, article two, chapter sixty-one of this code;

(3) Attempt to kill or injure by poison pursuant to section seven, article two, chapter sixty-one of this code;

(4) Malicious or unlawful assault pursuant to section nine, article two, chapter sixty-one of this code;

(5) Assault during commission of or attempt to commit a felony pursuant to section ten, article two, chapter sixty-one of this code;
(6) Extortion by threats pursuant to section thirteen, article two, chapter sixty-one of this code;

(7) Abduction of a person or kidnapping or concealing a child pursuant to section fourteen, article two, chapter sixty-one of this code;

(8) Enticing away or otherwise kidnapping any person pursuant to section fourteen-a, article two, chapter sixty-one of this code;

(9) A misdemeanor or felony sexual offense pursuant to article eight-b, chapter sixty-one of this code;

(10) Filming of sexually explicit conduct of minors pursuant to article eight-c, chapter sixty-one of this code;

(11) Misdemeanor or felony child abuse pursuant to article eight-d, chapter sixty-one of this code;

(12) A violent crime against the elderly which is an offense under the provisions of section nine or ten, article two, chapter sixty-one of this code which is subject to the sentencing provisions of section ten-a of said article two; or

(13) A property offense pursuant to article three, chapter sixty-one of this code, with respect to a child in a residential care facility or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a child or an incapacitated adult or an adult receiving behavioral health services who is a recipient of home care services, when the individual committing the offense was providing services for compensation in the residential care facility or within the home.

(b) The prosecuting attorneys in each of the fifty-five counties within the state, upon conviction of a misdemeanor, a felony or a lesser included misdemeanor offense for those
specific offenses set forth in subsection (a) of this section, shall report the conviction to the central abuse registry, together with additional information, provided in a form, as may be required by the criminal identification bureau for registry purposes. Reporting procedures shall be developed by the criminal identification bureau in conjunction with the prosecuting attorneys' institute and the office of the administrator of the supreme court of appeals.

(c) Information relating to convictions prior to the effective date of this section of a misdemeanor or a felony constituting child abuse or abuse or neglect of an incapacitated adult receiving behavioral health services shall, to the extent which is feasible and practicable, be placed on the central abuse registry. When any requester requests information related to a named individual, the criminal identification bureau may search and release other information maintained by the bureau to determine whether that individual has been convicted of offenses which are subject to inclusion on the registry.


All residential care facilities, day care centers, providers to adults with behavioral health needs and home care service providers authorized to operate in West Virginia shall:

(1) Provide notice to current employees of the agency and other persons providing services under a contract with the agency within sixty days of the effective date of this article, and provide notice to any newly hired employee or person at the time an employment or contractual relationship is entered into, which notice shall be in the following form: "NOTICE: All service providers in the state of West Virginia are subject to provisions of law creating a central abuse registry. Any person providing services for compensation to children or to incapacitated adults or to adults receiving behavioral health services,
who is convicted of a misdemeanor or felony offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services, is subject to listing on the central abuse registry. The fact that a person is listed on the registry may be disclosed in specific instances provided by law. Listing on the registry may limit future employment opportunities, including opportunities for employment with residential care facilities, day care centers and home care agencies. It is the policy of [name of agency] to promptly report all suspected instances of abuse, neglect or misappropriation of property to the proper authorities and to cooperate fully in the prosecution of these offenses."

(2) Cooperate fully with law enforcement, prosecuting attorneys and court personnel in criminal prosecutions of acts of child abuse or neglect or abuse or neglect of an incapacitated adult or adult receiving behavioral health services.

(3) Respond promptly to all requests by other service providers for references for former or present employees of the agency, which response may include a subjective assessment as to whether the individual for whom the reference is sought is suited to provide services to children or incapacitated adults or to adults receiving behavioral health services.

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CHAPTER 50

(H. B. 3049 — By Delegates Stemple, Mezzatesta, Williams, Carmichael, Swartzmiller, Louisos and Harrison)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]
AN ACT to amend and reenact section one, article two-c, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three, chapter eighteen-a of said code by adding thereto a new section, designated section ten, all relating to public safety; including on the central abuse registry those persons who have abused, neglected or committed other crimes against persons who are adults, receiving behavioral health services; authorizing the state department of education to request information from the central abuse registry; requiring fingerprinting and criminal record checks of certain applicants with state department of education; and use and disclosure of information obtained from record checks.

Be it enacted by the Legislature of West Virginia:

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

Chapter

15. Public safety.
18A. School Personnel.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

*§15-2C-1. Definitions.

1 The following words when used in this article have 2 meanings ascribed to them in this section, except in those 3 instances where the context clearly indicates a different 4 meaning:

*Clerk's Note: This section was also amended by H. B. 2903 (Chapter 49), which passed prior to this act.
(a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult or an adult receiving behavioral health services.

(b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in section three, article one, chapter forty-nine of this code, and shall include any act with respect to a child which is a crime against the person pursuant to article two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d of said chapter sixty-one, and any offense with respect to a child which is enumerated in section three of this article.

(c) "Abuse or neglect of an incapacitated adult" means "abuse" "neglect" and "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated adult which is enumerated in section three of this article.

(d) "Adult receiving behavioral health services" means a person over the age of eighteen years who is receiving any behavioral health service from a licensed behavioral health provider or any behavioral health provider whose services are paid for, in whole or in part, by medicaid or medicare.

(e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(f) "Residential care facility" means any facility where a child or an incapacitated adult or an adult receiving behavioral health services resides which is subject to registration, licensure
or certification by the department of health and human re-
resources, and shall include nursing homes, personal care homes,
residential board and care homes, adult family care homes,
group homes, legally unlicensed service providers, residential
child care facilities, family based foster care homes, specialized
family care homes and intermediate care facilities for the
mentally retarded.

(g) "Misappropriation of property" means any act which is
a crime against property under article three, chapter sixty-one
of this code with respect to a child in a residential care facility
or an incapacitated adult or an adult receiving behavioral health
services in a residential care facility or a child or an incapacitated
adult or an adult receiving behavioral health services who
is a recipient of home care services.

(h) "Home care" or "home care services" means services
provided to children or incapacitated adults or adults receiving
behavioral health services in the home through a hospice
provider, a community care provider, a home health agency,
through the medicaid waiver program, or through any person
when that service is reimbursable under the state medicaid
program.

(i) “Requester” means the West Virginia department of
education, any residential care facility, any state licensed day
care center, or any provider of home care services or an adult
receiving behavioral health services providing to the central
abuse registry the name of an individual and other information
necessary to identify that individual, and either: (1) Certifying
that the individual is being considered for employment by the
requester or for a contractual relationship with the requester
wherein the individual will provide services to a child or an
incapacitated adult or an adult receiving behavioral health
services for compensation; or (2) certifying that an allegation
of abuse, neglect or misappropriation of property has been
made against the individual.
CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-10. Criminal history check of applicants for licensure by the state department of education.

Beginning the first day of January, two thousand two, any applicant for an initial license issued by the West Virginia department of education shall be fingerprinted by the West Virginia state police in accordance with state board policy in order to determine the applicant’s suitability for licensure. The fingerprints shall be analyzed by the state police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check. Information contained in either the central abuse registry record or the federal bureau of investigation record may form the basis for the denial of a certificate for just cause. The applicant for initial certification pays for the cost of obtaining the central abuse registry record and the federal bureau of investigation record.

Upon written consent to the state department by the applicant and within ninety days of the state fingerprint analysis, the results of a state analysis may be provided to a county board with which the applicant is applying for employment without further cost to the applicant.

Information maintained by the state department or a county board which was obtained for the purpose of this section is exempt from the disclosure provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information.
AN ACT to amend article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; and to amend and reenact section nine, article six-a, chapter forty-nine of said code, all relating to abuse and neglect; authorizing the secretary of the department of health and human resources to issue administrative subpoenas in order to locate certain adults and children; providing for service; authorizing circuit courts to issue subpoenas for the secretary; and invoking judicial aid to compel compliance therewith.

Be it enacted by the Legislature of West Virginia:

That article six, 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 sixteen; and that section nine, article six-a, chapter forty-nine of said code be amended and reenacted, all to read as follows:

Chapter

CHAPTER 9. HUMAN SERVICES.

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.
§9-6-16. Compelling production of information.

(a) (1) In order to obtain information regarding the location of an adult who is the subject of an allegation of abuse or neglect, the secretary of the department of health and human resources may serve, by certified mail, personal service or facsimile, an administrative subpoena on any corporation, partnership, business or organization for production of information leading to determining the location of the adult. In case of disobedience to the subpoena, adult protective services may petition any circuit court to require the production of information.

(2) In case of disobedience to the subpoena, in compelling the production of information the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party, if the entity served is located in this state; or (B) the circuit court of the county in which the local protective services office conducting the investigation is located, if the entity served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the division of adult protective services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the division of adult protective services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of an adult who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court...
CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

(a) The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective service shall investigate all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective service office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a 24-

*Clerk's Note: This section was also amended by H. B. 2418 (Chapter 57), which passed prior to this act.
hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family and any person substantiated as being an abuser or neglecter by investigation of the department of health and human resources, with use of such cross-filing of such person’s name limited to the internal use of the department;

(2) Provide or arrange for emergency children’s services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child’s environment. As a part of this response, within fourteen days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

(4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours, there shall be a face-to-face interview with the child or children and the development of a protection plan which may involve law-enforcement officers or the court; and

(5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective service for investigation of the allegations as defined by this chapter and require the local child protective service to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.
(c) In those cases in which the local child protective service determines that the best interests of the child require court action, the local child protective service shall initiate the appropriate legal proceeding.

(d) The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child’s family and those responsible for the child’s care.

(e) To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective service plan shall, upon request, provide to the local child protective service such assistance and information as will enable it to fulfill its responsibilities.

(f) (1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary of the department of health and human resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party, if the person served is a resident; or (B) the circuit court of the county in which the local child protective services office conducting the investigation is located, if the person served is a nonresident.
(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the division of child protective services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the division of child protective services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

CHAPTER 52

(Com. Sub. for S. B. 674 — By Senator Wooton)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section three; to amend and reenact sections eight-a and nine-a, article twenty, chapter thirty-one of said code; to amend and reenact sections two and three,
article two-b, chapter forty-nine of said code; and to amend and 
reenact section two, article six-a of said chapter, all relating to 
juvenile detention and correctional facilities and child welfare 
facilities; providing for promulgation of standards by a date 
certain for the physical plant, structure, operation and mainte­
nance of detention and correctional facilities by the juvenile 
facility standards commission; authorizing an emergency rule 
relating to licensing and accreditation of juvenile detention and 
correctional facilities; providing a grandfather clause mandating 
inspections to ascertain compliance with said standards by the 
governor's committee on crime, delinquency and correction; 
providing for specific application of, and exemption from, the 
child welfare licensing jurisdiction of the commissioner of human 
services; authorizing promulgation of an emergency rule relating 
to ascertaining jurisdiction for licensing purposes; and providing 
that employees of the division of juvenile services must report 
child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter fifteen 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 three; that sections 
eight-a and nine-a, article twenty, chapter thirty-one of said code be 
amended and reenacted; that sections two and three, article two-b, 
chapter forty-nine of said code be amended and reenacted; and that 
section two, article six-a of said chapter be amended and reenacted, 
all to read as follows:

Chapter

15. Public Safety.

CHAPTER 15. PUBLIC SAFETY.
ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.


The governor's committee on crime, delinquency and correction shall annually visit and inspect jails, detention facilities, correctional facilities, facilities which may hold juveniles involuntarily or any other juvenile facility which may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with standards promulgated by the juvenile facilities standards commission, pursuant to section nine-a, article twenty, chapter thirty-one of this code and with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

§15-9-3. Ascertaining compliance with applicable standards in juvenile detention and correctional facilities.

The governor's committee on crime, delinquency and correction shall ascertain the compliance of juvenile detention and juvenile correctional facilities operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e, chapter forty-nine of this code, with standards for the structure, physical plant, operation and maintenance of the facilities, promulgated by the juvenile facility standards commission, pursuant to section nine-a, article twenty, chapter thirty-one of this code: Provided, That such review shall not include educational programs in such facilities.

CHAPTER 31. CORPORATIONS.
§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

(a) A juvenile facilities standards commission consisting of fourteen members is hereby created. The governor shall appoint two citizen members who are experienced and knowledgeable in the field of law enforcement; two citizen members who are experienced and knowledgeable in the field of juvenile development; one educator; one health care professional; and one lay member. Each of these appointed members shall serve for a term of three years and be eligible for reappointment. The secretary of the department of military affairs and public safety shall be a nonvoting member, ex officio, and shall serve as the commission's chairman. The state fire marshal, the chairman of the juvenile justice subcommittee of the governor's committee on crime, delinquency and correction, a child care licensing specialist from the department of health and human resources, designated by the secretary thereof, and a representative from the administrative office of the supreme court of appeals, designated by the director of that office, shall be nonvoting members, ex officio. The director of the division of juvenile services and the executive director of the regional jail and correctional facility authority shall be nonvoting members, ex officio, and shall serve in an advisory capacity.

(b) Members of the commission shall serve without compensation, but may be reimbursed by the division of juvenile services for reasonable and necessary expenses incurred in the performance of their duties. The division of
juvenile services shall provide the commission with secretarial and other necessary services.

(c) A vacancy among the appointed members of the commission shall be filled, within thirty days, in the same manner as the original appointment. A quorum consists of four of the seven voting members.

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

The purpose of the commission is to assure that proper minimum standards and procedures are developed for the structure and physical plant of juvenile detention and juvenile correctional facilities and their operation, maintenance and management. To this end, the commission shall:

(1) Develop standards for the structure and physical plant, maintenance and operation of juvenile detention and correctional facilities. These standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental, behavioral and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; rules and discipline; religious services; vocational programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation.

(2) Propose legislative rules for promulgation pursuant to article three, chapter twenty-nine-a of this code, including, without limitation, the minimum standards for juvenile deten-
tion and correctional facilities as provided in subdivision (1) of this section not later than the first day of December, two thousand one.

(3) Develop a process for reviewing and updating these rules and standards as necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority, if necessary, to implement proper standards in the state’s juvenile detention and correctional facilities.

The commission is hereby directed to promulgate an emergency rule, pursuant to the provisions of article three, chapter twenty-nine-a of this code, relating to licensing and accreditation for juvenile detention facilities and juvenile correctional facilities: Provided, That such emergency rule shall make provision for grandfathering existing juvenile detention facilities and juvenile correctional facilities into the licensing and accreditation scheme.

CHAPTER 49. CHILD WELFARE.

Article

2B. Duties of Commissioner of Human Services for Child Welfare.

6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.


§49-2B-3. Licensure, certification, approval and registration requirements.

As used in this article, unless the context otherwise requires:

(a) "Approval" means a finding by the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(b) "Certificate of approval" means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(c) "Certificate of license" means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

(d) "Certificate of registration" means a statement issued by the commissioner to a family day care home upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

(e) "Certification" means a statement issued by the commissioner to a family day care facility upon satisfactory inspection, approval and certification that the facility has complied with the applicable rules promulgated by the commissioner.

(f) "Child" means any person under eighteen years of age.

(g) "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the
division of juvenile services, created under section two, article five-e of this chapter.

(h) "Child-placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child-placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child-placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

(i) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes, or any facility that provides care for unmarried mothers and their children: Provided, That the term does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the division of juvenile services, created under section two, article five-e of this chapter, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

(j) "Commissioner" means the commissioner of human services.

(k) "Day care center" means a facility operated by a child welfare agency for the care of thirteen or more children on a nonresidential basis.

(l) "Department" means the department of health and human resources.
(m) "Facility" means a place or residence, including personnel, structures, grounds and equipment, used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose: Provided, That the term does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(n) "Family day care home" means a facility which is used to provide nonresidential child care for compensation in other than the child’s own home. The provider may care for four to six children, including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

(o) "Family day care facility" means any facility which is used to provide nonresidential child care for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age.

(p) "Foster family group home" means a private residence which is used for the care on a residential basis of six, seven or eight children who are unrelated by blood, marriage or adoption to any adult member of the household.

(q) "Foster family home" means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage or adoption to any adult member of the household.
(r) "Group home" means any facility, public or private, which is used to provide residential child care for ten or fewer children.

(s) "Group home facility" means any facility, public or private, which is used to provide residential care for eleven or more children: Provided, That the term does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(t) "License" means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

(u) "Registration" means the process by which a family day care home self-certifies compliance with the rules promulgated pursuant to this article.

(v) "Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis: Provided, That the term does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(w) "Rule" means a statement issued by the commissioner of the standard to be applied in the various areas of child care.
(x) "Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

(y) "Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care facility, a child-placing agency or a day care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the commissioner: Provided, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department
for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state department of education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the division of juvenile services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(f) The commissioner is hereby authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to
licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, christian science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, circuit court judge, family law master, employee of the division of juvenile services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the state department of human services: Provided, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the division of public safety and any law-enforcement agency having jurisdiction to investigate the complaint: Provided, however, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or
neglect of children, any other person may make a report if such
person has reasonable cause to suspect that a child has been
abused or neglected in a home or institution or observes the
child being subjected to conditions or circumstances that would
reasonably result in abuse or neglect.

CHAPTER 53

(Com. Sub. for S.B. 24 — By Senators Hunter, Minear,
Redd, Kessler, Mitchell and Rowe)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter forty-eight of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto seven new sections, designated
sections one thousand one, one thousand two, one thousand three,
one thousand four, one thousand five, one thousand six, and one
thousand seven, all relating to establishing children's centers for
the monitoring of custodial responsibility; providing exclusions;
requiring promulgation of rules; setting standards for centers;
requiring certification; requiring contracts for use of centers;
authorizing evaluations of centers; authorizing suspension or
revocation of certifications; permitting representations upon
certification; prohibiting false representation of certification and
providing penalties; and allowing courts to order use of centers
and to require payment of fees.

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

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART 10. CHILDREN’S CENTERS FOR THE MONITORING OF CUSTODIAL RESPONSIBILITY.

§48-26-1001. Legislative findings.

§48-26-1002. Exclusions.


§48-26-1005. Certification of children’s centers for the monitoring of custodial responsibility; revocation or suspension of certification.

§48-26-1006. Representations regarding certification; misrepresentations; penalties.

§48-26-1007. Court orders; use of centers without court order.

§48-26-1001. Legislative findings.

The Legislature finds that increasing numbers of children are living with one parent and that many of these children have been exposed to violence in the home. The Legislature further finds that it is sometimes in the best interests of children that the exercise of custodial responsibility, including the exchange of children, be monitored in order to observe and record the exercise of custodial responsibility and to discourage or prevent inappropriate conduct. For these reasons, the Legislature declares that a program be implemented to foster safe and neutral centers to monitor custodial responsibility, including the exchange of children, through the certification of children’s centers for the monitoring of custodial responsibility.

§48-26-1002. Exclusions.
The provisions of this part do not apply to therapeutic visitation exchanges or any activity conducted by the state or others in abuse and neglect proceedings pursuant to articles six and six-a, chapter forty-nine of this code in which assessment, evaluation, formulation of a treatment plan, case management, counseling, therapy or similar activities occur.


(a) The board shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this part. The board shall consult with judges, magistrates, law-enforcement officers, licensed batterers intervention programs, the family law committee of the West Virginia state bar, licensed domestic violence programs, trade organizations of licensed domestic violence programs and other individuals and organizations it considers appropriate.

(b) At a minimum, the rules are to include:

(1) Requirements for the physical facilities in which centers operate, including accommodations for persons with disabilities;

(2) Requirements for the qualification and training of individuals monitoring custodial responsibility, including the exchange of children;

(3) Requirements for qualifications and training of persons authorized to evaluate centers for compliance with the requirements of this part and rules promulgated pursuant to this section;

(4) The period of certification; and

(5) Allowable fees for use of the centers.

Every center shall require that the parents or other caretakers sign a written contract prior to using the center and that the use of the services provided by the center can be terminated by the center for violation of the contract.

§48-26-1005. Certification of children’s centers for the monitoring of custodial responsibility; revocation or suspension of certification.

(a) The board shall accept applications for certification and grant or deny the applications in an expeditious manner.

(b) The board may direct an evaluation to be made of a center that has applied for certification or has been certified to determine the center’s ability to monitor custodial responsibility, including the exchange of children, and the center’s compliance with the provisions of this article, rules promulgated pursuant to this article and other law. The evaluation may be done by the appointed members of the board, by designees of the board or by peer evaluation by persons employed at other certified centers.

(c) The board may suspend or revoke certification of a center if the board finds that the center has ceased to comply with the provisions of this article, rules promulgated pursuant to this article or other law.

§48-26-1006. Representations regarding certification; misrepresentations; penalties.

(a) Centers that have been certified may represent that they are certified for monitored custodial responsibility, including the exchange of children.
(b) No person may represent to the public that a center is certified unless the center has been certified in accordance with the provisions of this article. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined no more than five hundred dollars.

§48-26-1007. Court orders; use of centers without court order.

(a) Judges and magistrates may, as a condition of custody, order persons to apply to a certified center for the monitoring of custodial responsibility, including the exchange of children, and to comply with the terms and conditions of those services. A certified center may not be required to perform duties which are beyond the center’s capacity or scope of services.

(b) Judges and magistrates may require a person to pay a reasonable amount based on ability to pay and other relevant criteria for any fee charged by a center.

(c) Certified centers may monitor custodial responsibility or provide other services to persons who are not ordered to seek the services of the center when the adult parties agree to the use of the center.

CHAPTER 54

(H.B. 2959 — By Delegates Amores, Staton, Webster, R. Thompson, Wills and Faircloth)

[Passed April 12, 2001; 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 inadmissibility of certain statements made by juveniles when in custody or in the presence of law-enforcement officers.

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 incarcera-
tion: 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 proceed-
ings 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 recogni-
zance 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 statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen 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.
AN ACT to amend and reenact section ten, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver and transfer of juveniles to the criminal jurisdiction of the circuit court for second degree arson offenses involving setting fire to or burning a public building or church; and defining public building or church.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

§49-5-10. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section is to state, with particularity, the grounds for the
requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing evidence. Any hearing held under the provisions of this section is to be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial may be made by or before the court until the court has determined whether the proceeding is to be transferred to criminal jurisdiction.

c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who has attained the age of fourteen years makes a demand on the record to be transferred to the criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for further proceedings, subject to the court's jurisdiction.

d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

1) The juvenile is at least fourteen years of age and has committed the crime of treason under section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two and three, article two of said chapter; the crime of robbery involving the use or presenting of firearms or other deadly weapons under section twelve of said article; the crime of kidnapping under section fourteen-a of said article; the crime of first degree arson under section one, article three of said chapter; or the crime of sexual assault in the first degree under section three, article eight-b of said chapter; or

2) The juvenile is at least fourteen years of age and has committed an offense of violence to the person which would be
a felony if the juvenile was an adult: Provided, That the 
juvenile has been previously adjudged delinquent for the 
commission of an offense of violence to the person which 
would be a felony if the juvenile was an adult; or 

(3) The juvenile is at least fourteen years of age and has 
committed an offense which would be a felony if the juvenile 
was an adult: Provided, That the juvenile has been twice 
previously adjudged delinquent for the commission of an 
offense which would be a felony if the juvenile was an adult. 

(e) The court may transfer a juvenile proceeding to criminal 
jurisdiction if there is probable cause to believe that the juvenile 
would otherwise satisfy the provisions of subdivision (1), 
subsection (d) of this section, but who is younger than fourteen 
years of age. 

(f) The court may, upon consideration of the juvenile’s 
mental and physical condition, maturity, emotional attitude, 
home or family environment, school experience and similar 
personal factors, transfer a juvenile proceeding to criminal 
jurisdiction if there is probable cause to believe that the juvenile 
would otherwise satisfy the provisions of subdivision (2) or (3), 
subsection (d) of this section, but who is younger than fourteen 
years of age. 

(g) The court may, upon consideration of the juvenile’s 
mental and physical condition, maturity, emotional attitude, 
home or family environment, school experience and similar 
personal factors, transfer a juvenile proceeding to criminal 
jurisdiction if there is probable cause to believe that: 

(1) The juvenile, who is at least fourteen years of age, has 
committed an offense of violence to a person which would be 
a felony if the juvenile was an adult; or
(2) The juvenile, who is at least fourteen years of age, has committed an offense which would be a felony if the juvenile was an adult: Provided, That the juvenile has been previously adjudged delinquent for the commission of a crime which would be a felony if the juvenile was an adult; or

(3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other deadly weapon during the commission of a felony; or

(4) The juvenile has committed a violation of the provisions of section four hundred one, article four, chapter sixty-a of this code which would be a felony if the juvenile was an adult involving the manufacture, delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the term “narcotic drug” has the same definition as that set forth in section one hundred one, article one of said chapter; or

(5) The juvenile has committed the crime of second degree arson as defined in section two, article three, chapter sixty-one of this code involving setting fire to or burning a public building or church. For purposes of this subdivision, the term “public building” means a building or structure of any nature owned, leased or occupied by this state, a political subdivision of this state or a county board of education and used at the time of the alleged offense for public purposes. For purposes of this subdivision, the term “church” means a building or structure of any nature owned, leased or occupied by a church, religious sect, society or denomination and used at the time of the alleged offense for religious worship or other religious or benevolent purpose, or as a residence of a minister or other member of clergy.

(h) For purposes of this section, the term “offense of violence” means an offense which involves the use or threatened use of physical force against a person.
(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate findings of fact and conclusions of law in its order directing transfer.

(j) A juvenile who has been transferred to criminal jurisdiction pursuant to the provisions of subsection (e), (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of transfer to the supreme court of appeals or to appeal the order of transfer following a conviction of the offense of transfer. If the juvenile exercises the right to a direct appeal from an order of transfer, the notice of intent to appeal and a request for transcript is to be filed within ten days from the date of the entry of any such order of transfer, and the petition for appeal is to be presented to the supreme court of appeals within forty-five days from the entry of the order of transfer. The provisions of article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under this chapter except as modified in this section. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the period in which to file the petition for appeal for additional time, not to exceed a total extension of sixty days, as in the court’s opinion may be necessary for preparation of the transcript: Provided, That the request for a transcript was made by the party seeking appeal within ten days of entry of the order of transfer. In the event any notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be stayed upon motion of the defendant pending final action of the supreme court of appeals.
AN ACT to amend and reenact section five, article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the child fatality review team; providing required members of the team; defining the purposes of the team; restricting the authority of the team; providing that certain records and findings of the team are confidential; and providing that members of the team are not subject to subpoena.

Be it enacted by the Legislature of West Virginia:

That section five, article five-d, 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 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-5. Child fatality review team.

1 (a) The child fatality review team is hereby established under the office of the chief medical examiner. The child fatality review team is a multidisciplinary team created to review the deaths of children under the age of eighteen years as provided for in this section.
(b) The child fatality review team is to consist of the following members, appointed by the governor, to serve three-year terms:

(1) The chief medical examiner, who is to serve as the chairperson of the child fatality review team;

(2) Two prosecuting attorneys or their designees;

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

(4) One law-enforcement official other than a member of the West Virginia state police;

(5) One child protective services worker currently employed in investigating reports of child abuse or neglect;

(6) One physician, specializing in the practice of pediatric medicine or family medicine;

(7) One physician, specializing in the practice of pediatric critical care medicine;

(8) One social worker who may be employed in the area of public health;

(9) The director of the office of maternal and child health of the department of health and human resources or his or her designee;

(10) One representative of the sudden infant death syndrome program of the office of maternal and child health;
(11) The director of the division of children's mental health services of the office of behavioral health services or his or her designee;

(12) The director of the office of social services of the department of health and human resources or his or her designee;

(13) The superintendent of the department of education or his or her designee;

(14) The director of the division of juvenile services or his or her designee; and

(15) The president of the West Virginia association of school nurses or his or her designee.

(c) Members of the child fatality review team shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

(d) Each appointment of a prosecuting attorney, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West Virginia prosecuting attorneys institute. Each appointment of a law-enforcement officer, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the state fraternal order of police or the West Virginia deputy sheriff's association. Each appointment of a child protective services worker and a social worker, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West Virginia social work licensing board. Each appointment of a physician, whether for a full term or to fill a vacancy, is to be made by the governor from among three nominees selected by the West
Virginia state medical association or the West Virginia academy of pediatrics. When an appointment is for a full term, the nomination is to be submitted to the governor not later than eight months prior to the date on which the appointment is to become effective. In the case of an appointment to fill a vacancy, the nominations are to be submitted to the governor within thirty days after the request for the nomination has been made by the governor to the chairperson or president of the organization. When an association fails to submit the governor nominations for the appointment in accordance with the requirements of this section, the governor may make the appointment without nominations.

(e) Each member of the child fatality review team shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.

(f) The child fatality review team shall, pursuant to the provisions of chapter twenty-nine-a, promulgate rules applicable to the following:

1. The standard procedures for the establishment, formation and conduct of the child fatality review team; and

2. Recommend protocols for the review of child fatalities where other than natural causes are suspected.

(g) The child fatality review team shall:

1. Review all deaths of children under the age of eighteen years who are residents of this state in order to identify trends, patterns and risk factors;

2. Provide statistical analysis regarding the causes of child fatalities in West Virginia;
88 (3) Promote public awareness of the incidence and causes
89 of child fatalities, including recommendations for their reduc-
90 tion; and

91 (4) Provide training for state agencies and local
92 multidisciplinary teams.

93 (h) The child fatality review team shall submit an annual
94 report to the governor and to the Legislature concerning its
95 activities and the incidents of child fatalities within the state.
The report is due annually on the first day of December. The
96 report is to include statistics setting forth the number of child
97 fatalities, identifiable trends in child fatalities in the state,
98 including possible causes, if any, and recommendations to
99 reduce the number of preventable child fatalities in the state.
100 The report is to also include the number of children whose
101 deaths have been determined to have been unexpected or
102 unexplained.

103 (i) A local multidisciplinary investigative team created
104 pursuant to the provisions of section two of this article shall
105 review all cases referred to it pursuant to the provisions of that
106 section: Provided, That a local multidisciplinary investigative
107 team may refer any or all cases for review of deaths to the child
108 fatality review team. The local multidisciplinary investigative
109 team shall provide all information to the child fatality review
110 team necessary for the child fatality review team to create and
111 submit any report required by this section.

112 (j) The child fatality review team, in the exercise of its
113 duties as defined in this section, may not:

115 (1) Call witnesses or take testimony from individuals
116 involved in the investigation of a child fatality;
(2) Contact a family member of the deceased child, except if a member of the team is involved in the investigation of the death and must contact a family member in the course of performing his or her duties outside of the team; or

(3) Enforce any public health standard or criminal law or otherwise participate in any legal proceeding, except if a member of the team is involved in the investigation of the death or resulting prosecution and must participate in a legal proceeding in the course of performing in his or her duties outside of the team.

(k) Proceedings, records and opinions of the child fatality review team are confidential, in accordance with section one, article seven, chapter forty-nine of this code, and are not subject to discovery, subpoena or introduction into evidence in any civil or criminal proceeding. Nothing in this subsection is to be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the proceedings of the child fatality review team.

(l) Members of the child fatality review team may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the team. Nothing in this subsection may be construed to prevent a member of the child fatality review team from testifying to information obtained independently of the team or which is public information.
CHAPTER 57

(Com. Sub. for H. B. 2418 -- By Delegates Givens, Douglas, Fleischauer, Mezzatesta and Trump)

[Passed March 19, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article six-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child abuse and neglect; authorizing the division of child protective services to issue administrative subpoenas in order to locate certain children; providing for service; and invoking judicial aid to compel compliance therewith.

Be it enacted by the Legislature of West Virginia:

That section nine, article six-a, 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 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

*§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

1 (a) The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

*Clerk's Note: This section was also amended by S. B. 620 (Chapter 51), which passed subsequent to this act.
(b) The local child protective service shall investigate all reports of child abuse or neglect. Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families. Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective service office shall:

(1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a twenty-four hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family, any person substantiated as being an abuser or neglected by investigation of the department of health and human resources, with use of such cross-filing of such person’s name limited to the internal use of the department;

(2) Provide or arrange for emergency children’s services to be available at all times;

(3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child’s environment. As a part of this response, within fourteen days, there shall be: A face-to-face
interview with the child or children, and the development of a
protection plan, if necessary for the safety or health of the child,
which may involve law-enforcement officers or the court;

(4) Respond immediately to all allegations of imminent
danger to the physical well-being of the child or of serious
physical abuse. As a part of this response, within seventy-two
hours, there shall be: A face-to-face interview with the child or
children; and the development of a protection plan which may
involve law-enforcement officers or the court; and

(5) In addition to any other requirements imposed by this
section, when any matter regarding child custody is pending,
the circuit court or family law master may refer allegations of
child abuse and neglect to the local child protective service for
investigation of the allegations as defined by this chapter and
require the local child protective service to submit a written
report of the investigation to the referring circuit court or family
law master within the time frames set forth by the circuit court
or family law master.

(c) In those cases in which the local child protective service
determines that the best interests of the child require court
action, the local child protective service shall initiate the
appropriate legal proceeding.

(d) The local child protective service shall be responsible
for providing, directing or coordinating the appropriate and
timely delivery of services to any child suspected or known to
be abused or neglected, including services to the child’s family
and those responsible for the child’s care.

(e) To carry out the purposes of this article, all departments,
boards, bureaus and other agencies of the state or any of its
political subdivisions and all agencies providing services under
the local child protective service plan shall, upon request,
provide to the local child protective service such assistance and
information as will enable it to fulfill its responsibilities.

(f)(1) In order to obtain information regarding the location
of a child who is the subject of an allegation of abuse or
neglect, the secretary of the department of health and human
resources may serve, by certified mail or personal service, an
administrative subpoena on any person, corporation, partner-
ship, business or organization, for an appearance by the person
served or for the production of information leading to the
location of such child.

(2) In case of disobedience to the subpoena, in compelling
the personal appearance of any person so served or the produc-
tion of documents and things, the secretary may invoke the aid
of (A) the circuit court with jurisdiction over the served party,
if the person served is a resident, or (B) the circuit court of the
county in which the local child protective services office
conducting the investigation is located, if the person served is
a nonresident.

(3) A circuit court shall not enforce an administrative
subpoena unless it finds that (A) the investigation is one the
division of child protective services is authorized to make, and
is being conducted pursuant to a legitimate purpose, (B) the
inquiry is relevant to that purpose, (C) the inquiry is not too
broad or indefinite, (D) the information sought is not already in
the possession of the division of child protective services, and
(E) any administrative steps required by law have been fol-
lowed.
AN ACT to amend chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to the protection and preservation of statements and testimony of child witnesses; allowing and providing procedures for taking the testimony of a child witness by using live, two-way closed-circuit television; setting forth legislative findings; defining certain terms; prescribing findings of fact required for taking testimony of child witness through use of live two-way closed-circuit television; describing procedures for taking testimony of child witness; requiring certain jury instructions; and providing for the memorialization of statements made by alleged child victims of sexual assault or sexual abuse.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-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 six-b, to read as follows:

ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS AND TESTIMONY OF CHILD WITNESS.

§62-6B-1. Legislative findings.
§62-6B-1. Legislative findings.

1 The Legislature hereby finds that there are rare occasions when the interests of justice cannot be served because a child who is alleged to be the victim of certain offenses is unable to testify while in the physical presence of the defendant in the courtroom.

2 The Legislature further finds that the constitutional right of the accused to be confronted with the witnesses against him or her must be protected and that this constitutional guarantee can be protected while, at the same time, allowing a child to testify outside of the physical presence of a defendant in the courtroom.

3 The Legislature further finds that a child, more so than an adult, may be subject to coercion and pressure by interested adults and the interests of justice would be served by requiring, unless infeasible, memorialization of child victim statements in certain criminal matters.


1 For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.
“Child witness” means a person thirteen years of age or less who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the alleged victim.

“Live, two-way closed-circuit television” means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

“Operator” means the individual authorized by the court to operate the two-way closed-circuit television equipment used in accordance with the provisions of this article.

“Testimonial room” means a room within the courthouse other than the courtroom from which the testimony of a child witness or the defendant is transmitted to the courtroom by means of live, two-way closed-circuit television.


(a) Upon a written motion filed by the prosecuting attorney, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, two-way closed-circuit television.

(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, two-way closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:
(1) The child is an otherwise competent witness;

(2) That, absent the use of live, two-way closed-circuit television, the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying;

(3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and

(4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded.

(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, two-way closed-circuit television:

(1) The age and maturity of the child witness;

(2) The facts and circumstances of the alleged offense;

(3) The necessity of the child's live testimony to the prosecution's ability to proceed;

(4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and

(5) Any mental or physical handicap of the child witness.

(d) In determining whether to allow a child witness to testify through live, two-way closed-circuit television the court shall appoint a psychiatrist, doctoral-level licensed psychologist or a licensed clinical social worker with at least five years of significant clinical experience in the treatment and evaluation of children who shall serve as an advisor or friend of the court.
to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist, doctoral-level licensed psychologist or licensed clinical social worker shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, two-way closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.

§62-6B-4. Procedures required for taking testimony of child witness by closed-circuit television; election of defendant; jury instruction; sanction for failure to follow procedures.

(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.

(b) (1) If live, two-way closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant and the operator of the equipment may be present in the room.
with the child witness during testimony. Only the court, the
prosecuting attorney and the attorney for the defendant may
question the child. In pro se proceedings, the court may modify
the provisions of this subdivision relating to the role of the
attorney for the defendant to allow the pro se defendant to
question the child witness in such a manner as to cause as little
psychological trauma as possible under the circumstances. The
court shall permit the defendant to observe and hear the
testimony of the child witness contemporaneous with the taking
of the testimony. The court shall provide electronic means for
the defendant and the attorney for the defendant to confer
confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the
courtroom during the testimony of the child witness, the
defendant shall be taken into the testimonial room and be
televised live, by two-way closed-circuit equipment to the view
of the finder of fact and others present in the courtroom. The
defendant shall be taken to the testimonial room prior to the
appearance of the child witness in the courtroom. There shall be
made and maintained a recording of the images and sounds of
all proceedings which were televised pursuant to this article.
While the defendant is in the testimonial room, the defendant
shall be permitted to view the live, televised image of the child
witness and the image of those other persons in the courtroom
whom the court determines the defendant is entitled to view.
Only the court, the prosecuting attorney and the attorney for the
defendant may question the child. In pro se proceedings, the
court may modify the provisions of this subdivision relating to
the role of the attorney for the defendant to allow the pro se
defendant to question the child witness in such a manner as to
cause as little emotional distress as possible under the circum-
stances. The transmission from the courtroom to the testimonial
room shall be sufficient to permit the defendant to observe and
hear the testimony of the child witness contemporaneous with
the taking of the testimony. No proceedings other than the
taking of the testimony of the child witness shall occur while
the defendant is outside the courtroom. In the event that the
defendant elects that the attorney for the defendant remain in
the courtroom while the defendant is in the testimonial room,
the court shall provide electronic means for the defendant and
the attorney for the defendant to confer confidentially during
the taking of the testimony.

(c) In every case where the provisions of the article are
used, the jury, at a minimum shall, be instructed, unless such
instruction is waived by the defendant, that the use of live, two-
way closed-circuit television is being used solely for the child’s
convenience, that the use of the medium cannot as a matter of
law and fact be considered as anything other than being for the
convenience of the child witness and that to infer anything else
would constitute a violation of the oath taken by the jurors.

§62-6B-5. Memorialization of statements of certain child wit-
nesses; admissibility; hearing.

(a) After the effective date of this section, whenever any
law-enforcement officer, physician, psychologist, social worker
or investigator, in the course of his or her employment or
profession or while engaged in an active criminal investigation
as a law-enforcement officer or an agent of a prosecuting
attorney, obtains a statement from a child thirteen years of age
or younger who is an alleged victim in an investigation or
prosecution alleging a violation of the provisions of section
three, four, five or seven, article eight-b, chapter sixty-one of
this code, he or she shall forthwith make a contemporaneous
written notation and recitation of the statement received or
obtained. An audio recording or video recording with sound
capability of the statement may be used in lieu of the written
recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.

(b) The provisions of this section shall not apply to:

(1) Persons engaged in investigation pursuant to the provisions of article six or seven, chapter forty-nine of this code;

(2) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and

(3) Prosecuting attorneys when counseling with a child in preparation for eliciting the child’s testimony in court.

CHAPTER 59

(H. B. 2817 — By Delegates Kominar, Cann, Keener, Hall and Evans)

[Passed April 13, 2001; 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 alcohol beverage control administration; department of administration; department of agriculture; department of tax and revenue; division of corrections; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; education and state employees grievance board; higher education policy commission; public service commission; regional jail and correctional facility authority; and West Virginia solid waste management board 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 Alcohol Beverage Control Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Bell Atlantic - West Virginia, Inc. . . $ 32.67
(2) Phillip N. Mason and Nick I. Mason $ 13,933.00
17 (b) *Claims against the Department of Administration:*  

<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
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<tbody>
<tr>
<td>19 (1) Cameron Gas Company ............. $ 100,000.00</td>
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<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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</thead>
<tbody>
<tr>
<td>21 (2) Ron Mace and Joan P. Mace ....... $ 375.00</td>
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</tbody>
</table>

22 (c) *Claim against the Department of Agriculture:*  

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<td>24 (1) Ron Mace and Joan P. Mace ....... $ 637.50</td>
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25 (d) *Claim against the Department of Tax and Revenue:*  

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<tr>
<td>27 (1) Rick Modesitt .................... $ 179.85</td>
</tr>
</tbody>
</table>

28 (e) *Claims against the Division of Corrections:*  

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<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
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</thead>
<tbody>
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<td>30 (1) Arthur Adkins ........................ $ 70.55</td>
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<td>31 (2) Wendell K. Ash ...................... $ 13.13</td>
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<td>32 (3) Attorney General ........................ $ 19,829.75</td>
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<td>33 (4) Cabell County Commission ................ $ 86,678.74</td>
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<td>35 (6) Bruce Davidson ........................ $ 15.90</td>
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<td>36 (7) Division of Environmental Protection, Office of Water Resources .... $ 110.00</td>
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<td>38 (8) John A. Edens ........................ $ 733.00</td>
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<td>39 (9) Elswick Lumber Company, Inc. .......... $ 16.43</td>
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<td>40 (10) Ferguson Brothers Plumbing and Heating Company ........ $ 133.75</td>
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(f) Claims against the Division of Highways:

(To be paid from state road fund)

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<tr>
<th>Claim Number</th>
<th>Description</th>
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<tr>
<td>66</td>
<td>Billy Arthur</td>
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<td>Kenneth L. Baker</td>
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<td>Don K. Ball</td>
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<td>Linda D. Bean</td>
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<td>Donald L. and Carol M. Benninger</td>
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<td>Paul Boggess</td>
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<td>David W. Bott</td>
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<td>Mary Jane Bowling</td>
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<td>74</td>
<td>(9) Clinton Braham</td>
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<td>(14) Ernest G. Conley</td>
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<td>(21) Debra Ann Elsea</td>
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<td>(22) Richard C. and Joann Forester</td>
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<td>(23) Joseph S. Foster</td>
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<td>(25) Michael Freyman, Sr.</td>
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<td>(26) Russell S. Garrett</td>
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<td>(27) Charlotte Gerlach</td>
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<td>(28) Austin T. and Irene M. Getz</td>
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<td>(29) Mary Harless</td>
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<td>(30) James Franklin and Patricia Ann Hart</td>
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<td>(31) Edith L. Holmes</td>
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<td>(32) Kimberly and Gary Jones</td>
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<td>(33) Pennie L. and Kenneth A. Jones</td>
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<td>99</td>
<td>(34) Kenneth Andy Kennedy dba Kennedy Auto Sales</td>
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<td>(35) Mark Scott King</td>
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<td>101</td>
<td>(36) Douglas and Susan Kirchner</td>
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<td>(37) Barbara Linkous</td>
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<td>(38) Mickey D. Mahone, Sr.</td>
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<td>(40) Beth McElwee</td>
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<td>(41) Glenna B. Meadows</td>
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Claims

(42) Gary W. Miller ................................ $ 300.08
(43) Jill S. Moses ................................ $ 76.85
(44) Jeff Mozingo ................................ $ 95.85
(45) Barry and Teresa Mullins ................ $ 338.54
(46) Harry Murphy ................................ $ 50.00
(47) Leonard Brent Newsome ................... $ 1,000.00
(48) Stephen M. and Cathy J. Nichols .... $ 73.12
(49) Richard B. and Frances C. Pitzer .. $ 2,093.93
(50) Larry G. Randan .......................... $ 123.46
(51) Sue E. Ryder ................................ $ 62.99
(52) Connie F. Sadler ......................... $ 264.06
(53) Fred Savage, Administrator of the Estate of Luther Savage $ 4,000.00
(54) Eugene Saville ............................ $ 450.00
(55) Francis X. Scott .......................... $ 500.00
(56) Brenda K. Smailes ....................... $ 500.00
(57) Chris Smith ................................ $ 551.97
(58) Betty Williams Stacy ................... $ 3,570.00
(59) Carolyn Stover ............................ $ 250.00
(60) Stephanie Gale Sturm .................. $ 500.00
(61) Lynda Ware ................................ $ 1,143.57
(62) Denise Lynn Weldon .................... $ 160.35
(63) Sherry Wellman ......................... $ 1,000.00
(64) David Wigglesworth and Heath Acree $ 200.18
(65) Ransom Wiley .............................. $ 1,000.00
(66) Robert T. Wilson ......................... $ 281.41
(67) Sebrina L. Wilson ....................... $ 25,000.00
(68) John M. Woodie ......................... $ 250.00

(g) Claims against the Division of Juvenile Services:

(to be paid from general revenue fund)

(1) Charleston Psychiatric Group, Inc. .... $ 600.00
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<th></th>
<th>CLAIMS</th>
<th>[Ch. 59]</th>
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<td>140</td>
<td>(2) EMP of Harrison County</td>
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<td>(3) EMP of Ohio County</td>
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<td>(4) J. D. Hissem, D.D.S.</td>
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<td>(5) Ohio Valley Medical Center</td>
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<td>(6) Radiological Physicians Associates</td>
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<td>(7) Sirchie Finger Print Laboratories, Inc.</td>
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<td>(8) The Journal</td>
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<td>(9) Town and Country Hardware, Inc.</td>
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<td>(10) U. S. Food Service</td>
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<td>(11) United Hospital Center</td>
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<td>(12) Wheeling Clinic, A Division of Wheeling Hospital</td>
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<td>152</td>
<td>(h) Claim against the Division of Labor: (TO BE PAID FROM GENERAL REVENUE FUND)</td>
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<td>154</td>
<td>(1) Bill Lewis Motors, Inc.</td>
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<td>155</td>
<td>(i) Claims against the Division of Motor Vehicles: (TO BE PAID FROM STATE ROAD FUND)</td>
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<td>(1) Banctec</td>
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<td>(2) Roger L. Daff</td>
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<td>(3) Kathy E. Dillon</td>
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<td>(4) William A. Schreyer</td>
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<td>161</td>
<td>(j) Claim against the Division of Natural Resources: (TO BE PAID FROM SPECIAL REVENUE FUND)</td>
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<td>163</td>
<td>(1) University of Georgia Research Foundation, Inc.</td>
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<td>165</td>
<td>(k) Claims against the Education and State Employees Grievance Board:</td>
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(TO BE PAID FROM GENERAL REVENUE FUND)

1. Bell Atlantic - West Virginia, Inc. $224.96
2. Verizon - West Virginia, Inc. $81.07

CLAIMS

(1) Claims against the Higher Education Policy Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Casey P. Himel $45.00
2. Daniel J. Hoye $169.80
3. Patricia A. and David Samuel Hughart $2,327.00
4. Colin Tucker $139.00

(m) Claim against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Beckley Newspapers $66.64

(n) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. William R. Adkins $425.00
2. Gary R. Baker $30.00
3. Eddie Garrett $175.00
4. Mustapha M. Nasser $97.00
5. Nitro Electric Company $204,083.00
6. Ervin Lee Phillips $130.00
7. Kasey T. Thompson $13.20
8. William Junior Toncray $108.32

(o) Claim against the WV Solid Waste Management Board:

(TO BE PAID FROM SPECIAL REVENUE FUND - ACCOUNT NO. 3288)
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of administration; department of education; division of corrections; and the division of labor; 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, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Xerox Corporation ....................... $379,987.57

(b) Claim against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Donna L. Currey ....................... $882.00
### (c) Claims against the Division of Corrections:

**(TO BE PAID FROM GENERAL REVENUE FUND)**

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<td>(1) Anthony Creek Rescue Squad</td>
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<td>(2) Associated Emergency Physicians, Inc.</td>
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<td>(3) Associated Radiologists, Inc.</td>
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<td>(4) Ghali Bacha, M.D.</td>
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<td>(5) Barbour County Family Medicine</td>
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<td>(6) Bluefield Internist-Cardiologist, Inc.</td>
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<td>(7) Capital Neurology</td>
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<td>(8) Central WV Medcorp, Inc.</td>
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<td>(9) Charleston Area Medical Center, Inc.</td>
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<td>(10) Charleston Cardiology Group</td>
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<td>(11) Charleston Heart Specialists</td>
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<td>(12) City of Wheeling Ambulance</td>
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<td>(13) Correctional Medical Services, Inc</td>
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<td>(14) D’Brot and Al-Asadi, PLLC</td>
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<td>(15) G. Y. Dagher, M.D.</td>
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<td>(17) Eye and Ear Clinic Physicians, Inc.</td>
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<td>(18) Carl Fisher, III, M.D.</td>
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<td>(19) James W. Gainer, M.D.</td>
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<td>(20) General Ambulance, Inc.</td>
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<td>(26) Carl Stephen High, M.D.</td>
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<td>(27) Highland Cellular, Inc.</td>
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<td>(28) Huntington Anesthesiology Group</td>
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<td>(29) James E. LeVos, M.D., Doddridge County Medical Center</td>
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<td>(30) Jan Care Ambulance</td>
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<td>Kanawha Nephrology, Inc.</td>
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<td>Kelly Medical Corporation</td>
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<td>Laboratory Corporation of America</td>
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<td>Montgomery Radiologists, Inc.</td>
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<td>Mountain State Plastic Surgeons, PLLC</td>
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<td>Neurological Associates, Inc.</td>
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<td>William E. Noble, M.D.</td>
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<td>Joseph A. Noronha, M.D.</td>
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<td>Nuclear Medicine Services, Inc.</td>
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<td>Ohio Valley Medical Center</td>
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<td>Pocahontas Memorial Hospital</td>
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<td>Ganpat G. Thakker, M.D.</td>
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<td>Thoracic &amp; Cardiovascular Associates, Inc.</td>
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<td>92</td>
<td>Tri-Tech, Inc.</td>
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<td>93</td>
<td>Tygart Valley Total Care Clinic</td>
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<td>94</td>
<td>University Health Associates</td>
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<td>95</td>
<td>Valley Radiologists, Inc.</td>
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</tbody>
</table>
AN ACT to amend and reenact sections three and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to payment of awards to crime victims; allowing payment of claims for crime scene cleanup, victim relocation, mental health counseling for secondary victims of crime and certain travel expenses; clarifying that mental health counseling is an allowable expense; and increasing the total award that may be made for victims left permanently and totally disabled.

Be it enacted by the Legislature of West Virginia:
That sections three and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.


1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

3 (1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

4 (2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

5 (3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

6 (4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor; and

7 (5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime
committed. An award to a secondary victim may not exceed one thousand dollars.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him or her, from any of the following sources:

(1) The offender, including any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a
victim compensation program which by its nature poses a substantial threat of personal injury or death and is punishable by fine or imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct also includes an act of terrorism, as defined in 18 U.S.C. §2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs or reckless driving.

(d) “Dependent” means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term “support” includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term “dependent” includes a child of the victim born after his or her death.

(e) “Economic loss” means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term “economic loss” includes a lost scholarship as defined in this section.
(f) (1) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

(2) Allowable expense includes a total charge not in excess of six thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(3) Allowable expense also includes:

(A) A charge, not to exceed one thousand dollars, for crime scene cleanup;

(B) Victim relocation costs, not to exceed one thousand dollars; and

(C) Reasonable travel expenses, not to exceed one thousand dollars, for a claimant to attend court proceedings that are conducted for the prosecution of the offender.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available
appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an
award, that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.

(m) “Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a postsecondary school educational program and, which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The judge or commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.
(c) The judge or commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation or reconsider a claim already approved.

(e) A judge or commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all
or part of the expected recoupment, the claim shall be reopened
and an award shall be approved in an amount equal to the
amount of expected recoupment that it is determined the
claimant will not receive from the collateral source, subject to
the limitation set forth in subsection (g) of this section.

(g) (1) Except in the case of death, or as provided in
subdivision (2) of this subsection, compensation payable to a
victim and to all other claimants sustaining economic loss
because of injury to that victim may not exceed twenty-five
thousand dollars in the aggregate. Compensation payable to all
claimants because of the death of the victim may not exceed
thirty-five thousand dollars in the aggregate.

(2) In the event the victim’s personal injuries are so severe
as to leave the victim with a disability, as defined in section 223
of the social security act, as amended, as codified in 42 U.S.C.
423, the court may award an additional amount, not to exceed
one hundred thousand dollars, for special needs attributable to
the injury.

(h) If an award of compensation of five thousand dollars or
more is made to a minor, a guardian shall be appointed pursuant
to the provisions of article ten, chapter forty-four of this code
to manage the minor’s estate.

CHAPTER 62

(Com. Sub. for S. B. 603 — By Senator Tomblin, Mr. President)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections five, nine and twelve, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article three, chapter twenty-two of said code, all relating to economic development and reclamation of surface mining sites; allowing office of coalfield community development and other economic development agencies to develop master plans; expanding the authority of the office of coalfield community development relating to post-mining sites; including recommendations by local economic redevelopment authorities as part of reclamation plans; establishing criteria to consider in development of these sites; providing for certain land uses as post-mining land uses; providing that master plans must comport to environmental reclamation requirements; establishing additional rulemaking requirements for the office of coalfield community development; and allowing existing and future surface mining permits to include master plan criteria and reclamation standards.

Be it enacted by the Legislature of West Virginia:

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

Chapter


22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§ 5B-2A-12. Rulemaking.

The office has and may exercise the following duties, powers and responsibilities:

(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;

(2) To establish a procedure for developing and implementing coalfield community development statements as provided in section seven of this article and to administer the procedure so established;

(3) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

(4) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in section nine of this article and to administer the procedure so established;

(5) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

(6) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(7) To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established;
(8) In conjunction with the division, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and

(9) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance may include the preparation of a master land use plan pursuant to the provisions of section nine of this article.


(a) As a part of the coalfield community development statement required by section seven of this article, the office, in a collaborative effort with those persons and entities identified in subdivision (1), subsection (b), section seven of this article, shall determine the land and infrastructure needs in the general area of the surface mining operations.

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and
(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature and cost to develop and maintain the community assets identified in section eight of this article; and

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) In addition to the coal field community development statement cited in subsection (a) of this section, the office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to
the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three, chapter twenty-two of this code. Participation in a master land use plan is voluntary.

(1) State, local, county or regional development or redevelopment authorities may determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs that include industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses.

(2) A master land use plan must be reviewed by the office of coalfield community development and approved by the division of environmental protection pursuant to section ten, article three, chapter twenty-two of the code before the master land use plan can be implemented.

(3) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in subdivision (1) of this subsection shall be developed by the relevant state, local, county or regional development or redevelopment authority. These standards must be in place before the respective state, local, county or regional development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a state, local, county or regional development or redevelopment authority may not occur unless it is determined that: (a) The property use is compatible with adjacent land uses; (b) the use satisfies the relevant development or redevelopment authority’s anticipated need and market use; (c) the property has in place necessary infrastructure components needed to achieve the anticipated use; (d) the use is supported by all other appropriate public agencies; (e) the property is eligible for bond release in accordance with section
twenty-three, article three, chapter twenty-two of this code; and
(f) the use is feasible. Required infrastructure component standards require approval of the relevant county commission or commissions before such standards are accepted. County commission approval may be rendered only after a reasonable public comment period.

(4) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to paragraph (C), subdivision (1), subsection (c), section twenty-three, article three, chapter twenty-two of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment or planning agencies.

§5B-2A-12. Rule making.

The office shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The development of standards for establishing the value of property by the office;

(2) A process for the development of a coalfield community development statement when multiple permit applications are applied for by one or more operators in any single county or contiguous area of an adjacent county; and

(3) Criteria for the development of a master plan by local, county, regional or redevelopment authorities which coordinates the permitting and reclamation requirements of the division of environmental protection with these authorities.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.
§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface-mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farmlands and the average yield of food, fiber, forage or wood products from the lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the use to existing land use policies and plans and the comments of any owner of the surface, other state agencies and local governments which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation. The plan may include a master plan as provided in section nine, article two-a, chapter five-b of
this code which includes a post-mining land use consistent with
the reclamation and post-mining land use requirements of this
article;

(4) A detailed description of how the proposed post-mining
land use is to be achieved and the necessary support activities
which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in
mining and reclamation and a description of the major equip-
ment; a plan for the control of surface water drainage and of
water accumulation; a plan where appropriate, for backfilling,
soil stabilization and compacting, grading, revegetation and a
plan for soil reconstruction, replacement and stabilization
pursuant to the performance standards in subdivision (7),
subsection (b), section thirteen of this article for those food,
forage and forest lands identified therein; and a statement as to
how the operator plans to comply with each of the applicable
requirements set out in section thirteen or fourteen of this
article;

(6) A detailed estimated timetable for the accomplishment
of each major step in the reclamation plan;

(7) The consideration which has been given to conducting
surface mining operations in a manner consistent with surface
owner plans and applicable state and local land use plans and
programs;

(8) The steps to be taken to comply with applicable air and
water quality laws and rules and any applicable health and
safety standards;

(9) The consideration which has been given to developing
the reclamation plan in a manner consistent with local physical
environmental and climatological conditions;
(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface mining and reclamation process to assure the protection of: (A) The quality of surface and groundwater systems, both on- and off-site, from adverse effects of the surface mining operation; (B) the rights of present users to the water; and (C) the quantity of surface and groundwater systems, both on- and off-site, from adverse effects of the surface mining operation or to provide alternative sources of water where the protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Any other requirements as the director may prescribe by rule.
(b) Any surface mining permit application filed after the effective date of this subsection may contain, in addition to the requirements of subsection (a) of this section, a master land use plan, prepared in accordance with article two-a, chapter five-b of this code, as to the post-mining land use. A reclamation plan approved but not implemented or pending approval as of the effective date of this section may be amended to provide for a revised reclamation plan consistent with the provisions of this subsection.

(c) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

CHAPTER 63

(Com. Sub. for S. B. 526 — By Senators Sharpe, Snyder and Facemyer)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred seven, article four of said chapter, all relating to the consumer credit and protection act and regulated consumer lenders; modifying the late payment fees on precomputed and nonprecomputed credit sales or consumer loans, and modifying the unsecured loan amounts on which an origination fee and thirty-one percent interest can be charged.
Be it enacted by the Legislature of West Virginia:

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

Article

4. Regulated Consumer Lenders.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

2 (a) Five percent of the unpaid amount of the installment, not to exceed fifteen dollars; or

3 (b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

4 (2) A delinquency charge under subdivision (a) of subsection (1) may be collected only once on an installment however long it remains in default. No delinquency charge may be
collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments and then to delinquency and other charges.

(4) If two installments, or parts thereof, of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans.

The amount of the rebate may not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated and no further delinquency or deferral charges shall be made.
44 (5) The commissioner shall prescribe by rule the method or
45 procedure for the calculation of delinquency charges consistent
46 with the other provisions of this chapter where the precomputed
47 consumer credit sale or consumer loan is payable in unequal or
48 irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer
credit sales or consumer loans repayable in in­
stallments.

1 (1) In addition to the continuation of the sales finance
2 charge or loan finance charge on a delinquent installment with
3 respect to a nonprecomputed consumer credit sale or consumer
4 loan, refinancing or consolidation, repayable in installments,
5 the parties may contract for a delinquency charge on any
6 installment not paid in full within ten days after its scheduled
7 due date of five percent of the unpaid amount of the installment,
8 not to exceed fifteen dollars.

9 (2) A delinquency charge under subsection (1) of this
10 section may be collected only once on an installment however
11 long it remains in default. A delinquency charge may be
12 collected at the time it accrues or at any time thereafter.

13 (3) No delinquency charge may be collected on an install-
14 ment which is paid in full within ten days after its scheduled
15 due date, even though an earlier maturing installment or a
16 delinquency or deferral charge on an earlier installment may not
17 have been paid in full. For purposes of this subsection, pay-
18 ments shall be applied first to current installments, then to
19 delinquent installments and then to delinquency and other
20 charges.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-107. Loan finance charge for regulated consumer lenders.
(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of two thousand dollars or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed thirty-one percent per year on the unpaid balance of the principal amount.

(3) On a loan of greater than two thousand dollars or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed twenty-seven percent per year on the unpaid balance of the principal amount: Provided, That the loan finance charge on any loan greater than ten thousand dollars may not exceed eighteen percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than two thousand dollars, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the
amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges may be permissible and may not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended shall, for purposes of this subsection, constitute the amount financed. Other than herein provided, no points, origination fee, investment fee or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by section one hundred nine, article three of this chapter, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven, article three of this chapter.

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that
procedure is not consistently used to obtain a greater yield than
would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender
in each monthly billing cycle which is one twelfth of the
maximum annual rates permitted by this section computed on
an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day
of the billing cycle, less all payments on and credits to such
debt during such billing cycle and excluding all additional
borrowings during the billing cycle.

For the purpose of this subdivision, a billing cycle is
monthly if the billing statement dates are on the same day each
month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan
finance charge which may be made by a regulated consumer
lender is that percentage which bears the same relation to an
applicable monthly percentage as the number of days in the
billing cycle bears to thirty.

(c) Notwithstanding subdivisions (a) and (b) of this
subsection, if there is an unpaid balance on the date as of which
the loan finance charge is applied, the licensee may contract for
and receive a charge not exceeding fifty cents if the billing
cycle is monthly or longer or the pro rata part of fifty cents
which bears the same relation to fifty cents as the number of
days in the billing cycle bears to thirty if the billing cycle is
shorter than monthly, but no charge may be made pursuant to
this subdivision if the lender has made an annual charge for the
(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of two thousand dollars or less contract for and receive interest at a rate of up to thirty-one percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: Provided, That no other finance charges are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.
AN ACT to amend article one, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred thirteen; to amend and reenact section one, article nine, chapter forty-seven of said code; and to amend and reenact section one, article one, chapter forty-seven-b of said code, all relating to adding the terms "limited liability company" and "professional limited liability company" to the definition of "person" in certain code provisions relating to limited partnerships or partnerships.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one-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 one hundred thirteen; that section one, article nine, chapter forty-seven of said code be amended and reenacted; and that section one, article one, chapter forty-seven-b of said code be amended and reenacted, all to read as follows:

Chapter

47. Regulation of Trade.
47B. Uniform Partnership Act.
CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-113. Disclosures required by limited liability companies holding certain licenses.

Notwithstanding any provisions of this code to the contrary, any limited liability company seeking or holding a Class A liquor license issued pursuant to the provisions of article seven, chapter sixty of this code, or which seeks or holds a license under the provisions of article twenty-two-b, chapter twenty-nine of this code shall disclose in any required application the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, or if the license is already held, shall reveal the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, to the regulatory agency overseeing the licensee.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

(1) “Certificate of limited partnership” means the certificate referred to in section eight of this article and the certificate as amended;

(2) “Contribution” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a
partner contributes to a limited partnership in his or her capacity as a partner;

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(7) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(8) "Partner" means a limited or general partner;

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company,
professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity; and

(12) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 1. GENERAL PROVISIONS.

§47B-1-1. Definitions.

In this chapter:

(1) "Business" includes every trade, occupation and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(i) In order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Foreign limited liability partnership" means a partnership or association formed under or pursuant to an agreement governed by the laws of any state or jurisdiction other than this state that is denominated as a registered limited liability partnership or limited liability partnership under the laws of such other jurisdiction.
(5) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section two, article two of this chapter, predecessor law, or comparable law of another jurisdiction and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(6) "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(7) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(8) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, professional limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(10) "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(11) "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under section one, article ten of this chapter.
(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(13) "Statement" means a statement of partnership authority under section three, article three of this chapter, a statement of denial under section four of said article, a statement of dissociation under section four, article seven of this chapter, a statement of dissolution under section five, article eight of this chapter, a statement of merger under section seven, article nine of this chapter, a statement of registration and a statement of withdrawal under section one, article ten of this chapter, or an amendment or cancellation of any of the foregoing.

(14) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

CHAPTER 65

(H. B. 3131 — By Mr. Speaker, Mr. Kiss, and Delegates Trump and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one-a, article eleven, chapter eight; to amend and reenact sections two, three, ten and twenty-two, article twenty, chapter thirty-one; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine all of said code, all relating to the funding of the
regional jail and correctional facility authority; providing for disposition of fines received from magistrates and municipalities; authorizing the West Virginia regional and correctional facility authority to create special funds in the state treasury; and disposition of certain fees paid in conjunction with divorce and civil actions and criminal cases with the West Virginia regional and correctional facility authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-15. Annual statement of sheriff of fines and costs received from magistrates; payment into state treasury.

1 The sheriff shall annually, during the month of January, render under oath to the auditor a true statement of the account of all fines and costs collected by magistrates and transmitted to him or her and pay into the treasury of the state, the net proceeds of fines and costs as exhibited by the account, to be
appropriated as directed by section 5, article XII of the constitution of this state. Failure to do this is a breach of his or her official duty. For the purposes of this section, the net proceeds of such fines and costs are the proceeds remaining after deducting therefrom: (1) The cost of auditing the accounts of magistrates by the chief inspector's office; (2) the amounts of costs and fees paid into the regional jail and correctional facility authority fund of the state treasury by the clerk in the manner provided by section four-a, article three, chapter fifty of this code; (3) until a regional facility is provided pursuant to article twenty, chapter thirty-one of this code, the expenses and costs of operation and maintenance of the county jail or a regional correctional facility, other than a facility provided pursuant to article twenty, chapter thirty-one of this code, operated jointly with one or more other county or counties, and of constructing, reconstructing and renovating any jail facility used for county prisoners and of periodic payments, if any, for the establishment of a jail improvement fund in the manner provided by section nine, article one of this chapter for constructing, reconstructing or renovating any jail facility used for county prisoners; and (4) after a regional facility is made available to the county pursuant to article twenty, chapter thirty-one of this code, the expenses and costs of operation of the jail for the county in the form of the per day costs required to be paid into a regional jail and correctional facility authority fund pursuant to subsection (h), section ten, article twenty, chapter thirty-one of this code, the periodic payments, if any, for the establishment of a jail improvement fund in the manner provided by section nine, article one of this chapter, which shall thereafter be transmitted to the state treasurer and deposited in a regional jail and correctional facility authority fund, and the funds expended by the respective counties, if any, for expenses incurred in housing prisoners in local jail facilities used as holding facilities.
CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1a. Disposition of criminal costs into state treasury account for regional jail and correctional facility authority fund.

The clerk of each municipal court, or other person designated to receive fines and costs, shall at the end of each month pay into the regional jail and correctional facility authority fund in the state treasury an amount equal to forty dollars of the costs collected in each proceeding involving a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, or any other offense for which the ordinance prescribing the offense provides for a period of incarceration: Provided, That in a case where a defendant has failed to pay all costs assessed against him or her, no payment may be made to the regional jail and correctional facility authority fund until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-2. Definitions.

§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

§31-20-10. Regional jail and correctional facility authority funds.

§31-20-22. Money of the authority.

§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:
(a) "Adjacent regional juvenile detention facility" means a facility constructed or maintained on property owned or controlled by the regional jail authority and designed for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(b) "Authority" or "West Virginia Regional Jail Authority" means the West Virginia regional jail and correctional facility authority created by this article.

(c) "Board" means the governing body of the authority.

(d) "Bonds" means bonds of the authority issued under this article.

(e) "Cost of construction or renovation of a local jail facility, regional jail facility or juvenile facility" means the cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any project, together with any other expenses necessary or incidental to the financing and the construction or renovation of the facilities and the placing of the facilities in operation.

(f) "County" means any county of this state.

(g) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality
created, designated or established by the United States of America.

(h) "Fund" or "funds" means a regional jail and correctional facility authority fund provided in section ten of this article, including those accounts that may be established by the authority for accurate accounting of the expenditure of public funds by that agency.

(i) "Government" means state and federal government, and any political subdivision, agency or instrumentality of the state or federal government, corporate or otherwise.

(j) "Inmate" means any adult person properly committed to a local or regional jail facility or a correctional facility.

(k) "Local jail facility" means any county facility for the confinement, custody, supervision or control of adult persons convicted of misdemeanors, awaiting trial or awaiting transportation to a state correctional facility.

(l) "Municipality" means any city, town or village in this state.

(m) "Notes" means any notes as defined in section one hundred four, article three, chapter forty-six of this code issued under this article by the authority.

(n) "Correctional facility" means any correctional facility, penitentiary or other correctional institution operated by the division of corrections for the incarceration of adults.

(o) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision or control of adult persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.
(p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions and all other income received by the authority.

(q) "Security interest" means an interest in the loan portfolio of the authority which is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(r) "Work farm" has the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

(s) "Juvenile detention facility" or "juvenile detention center" means a facility operated by the division of juvenile services for the short term preadjudicatory detention of juveniles, for the confinement of juveniles who are awaiting transportation to or placement at another juvenile detention facility or juvenile correctional facility and for juveniles who are awaiting trial as an adult pursuant to section ten, article five, chapter forty-nine of this code.

(t) "Juvenile correctional facility" means a facility operated by the division of juvenile services for the postdispositional confinement of juveniles adjudicated of offenses that would be criminal offenses if committed by an adult.

§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

There is hereby created the West Virginia regional jail and correctional facility authority which shall be a body corporate and a government instrumentality. Wherever in this chapter and elsewhere in law reference is made to the West Virginia
The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the commissioner of the division of corrections; the director of the division of juvenile services; the secretary of the department of military affairs and public safety; the secretary of the department of administration, or his or her designated representative; three county officials appointed by the governor, no more than two of which may be of the same political party; and two citizens appointed by the governor to represent the areas of law and medicine. The commissioner of the division of corrections and the director of the division of juvenile services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years beginning the first day of July, one thousand nine hundred eighty-nine. Of the members of the board first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred ninety-one, two shall be appointed for terms ending the thirtieth day of June, one thousand nine hundred ninety-two, and two shall be appointed for terms ending the thirtieth day of June, one thousand nine hundred ninety-three. As these original appointments expire, each subsequent appointment shall be for a full four-year term.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the
unexpired term. Any appointed member is eligible for reappointment. Members of the authority are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board of the authority shall execute an official bond in a penalty of ten thousand dollars, conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the authority. The bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

§31-20-10. Regional jail and correctional facility authority funds.

(a) The regional jail and correctional facility authority may create special funds in the state treasury to identify various revenue sources and payment of specific obligations. These funds may be used for purposes that include, but are not limited to, the construction, renovation or repair of specific facilities, cash control, facility maintenance and the individual operations accounts of facilities operated by the authority. The authority may create other separate accounts within these funds that it determines are necessary for the efficient operation of the authority.

(b) Revenues deposited into these funds shall be used to make payments of interest and shall be pledged as security for bonds, security interests or notes issued or lease-purchase obligations entered into with another state entity by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in these funds is in excess of the immediate requirements of this article, it may request that the excess be invested until needed.
In this case the excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to these funds.

(d) If the authority determines that moneys held in these funds are in excess of the amount needed to carry out the purposes of this article, it shall take any action that is necessary to release the excess and transfer it to the general revenue fund of the state treasury.

(e) These funds shall consist of the following:

(1) Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion in these funds;

(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in these funds.

(f) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within these funds and expended for the purpose of construction, renovation and repair of correctional facilities,
(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness, including lease-purchase obligations entered into by the authority with another state entity or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from these funds after any requirements of debt service have been satisfied the amounts that are necessary for the maintenance and operation of regional jails that are constructed pursuant to the provisions of this article and shall expend those amounts for that purpose. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from those sources shall be in proportion to the percentage the amount contributed to these funds by the counties in each region bears to the total amount received by these funds from those sources;

(5) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from these funds to
pay for costs incurred at the regional jail facility at which each inmate was incarcerated; and

(6) Any amounts deposited in these funds from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility authority fund a cost per day for each incarcerated inmate to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code to cover the costs of operating the regional jail facilities of this state to maintain each inmate. The per diem costs for incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities: Provided, That each regional jail facility operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four...
109 hours. Thereafter, in cases of continuous incarceration, subse-
110 quent per diem charges shall be made upon a county only as
111 subsequent intervals of twenty-four hours pass from the original
112 time of incarceration.

§31-20-22. Money of the authority.

1 All money accruing to the authority from whatever source
2 derived, except legislative appropriations, and except that
3 authorized to be deposited directly into a regional jail and
4 correctional facility authority fund shall be collected and
5 received by the treasurer of the authority, who shall pay it into
6 the state treasury in the manner required by section two, article
7 two, chapter twelve of this code, to be credited to the fund.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

*§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in subsec-
7 tion (c) of this section, for each civil action instituted under the
8 rules of civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals, or any
10 other action, cause, suit or proceeding in the circuit court, the
11 clerk of the court shall, at the end of each month, pay into the

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act, and S. B. 652 (Chapter 93), which passed
subsequent to this act.
funds or accounts described in this subsection an amount equal
to the amount set forth in this subsection of every filing fee
received for instituting the action as follows:

(1) Into the regional jail and correctional facility authority
fund in the state treasury established pursuant to the provisions
of section ten, article twenty, chapter thirty-one of this code, the
amount of sixty dollars; and

(2) Into the court security fund in the state treasury estab-
lished pursuant to the provisions of section fourteen, article
three, chapter fifty-one of this code, the amount of five dollars.

(b) For each divorce action instituted in the circuit court,
the clerk of the court shall, at the end of each month, report to
the supreme court of appeals, the number of actions filed by
persons unable to pay, and pay into the funds or accounts in this
subsection an amount equal to the amount set forth in this
subsection of every filing fee received for instituting the
divorce action as follows:

(1) Into the regional jail and correctional facility authority
fund in the state treasury established pursuant to the provisions
of section ten, article twenty, chapter thirty-one of this code, the
amount of ten dollars;

(2) Into the special revenue account of the state treasury,
established pursuant to section six hundred four, article two,
chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four
hundred three, article thirty, chapter forty-eight of this code, an
amount of fifty dollars; and

(4) Into the court security fund in the state treasury,
established pursuant to the provisions of section fourteen,
article three, chapter fifty-one of this code, the amount of five
dollars.

(c) For each action for divorce, separate maintenance or
annulment instituted in the circuit court, the clerk of the court
shall, at the end of each month, pay into the funds or accounts
in this subsection an amount equal to the amount set forth in
this subsection of every filing fee received for instituting the
divorce action as follows:

(1) Into the regional jail and correctional facility authority
fund in the state treasury established pursuant to the provisions
of section ten, article twenty, chapter thirty-one of this code, the
amount of ten dollars;

(2) Into the special revenue account of the state treasury,
established pursuant to section six hundred four, article two,
chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four
hundred three, article thirty, chapter forty-eight of this code, an
amount of seventy dollars; and

(4) Into the court security fund in the state treasury,
established pursuant to the provisions of section fourteen,
article three, chapter fifty-one of this code, the amount of five
dollars.

(d) Notwithstanding any provision of subsection (a) or (b)
of this section to the contrary, the clerk of the court shall, at the
end of each month, pay into the family court fund established
under section four hundred three, article thirty, chapter forty-
eight of this code an amount equal to the amount of every fee
received for petitioning for the modification of an order
involving child custody, child visitation, child support or
spousal support as determined by subdivision (3), subsection
(a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4), subsection (a), section eleven of this article.

(e) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(f) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and correctional facility authority fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.

CHAPTER 66

(H. B. 3156 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen, chapter thirty-one of said code by adding thereto a new section, designated section six-b; and to amend and reenact section fourteen, article
three, chapter thirty-three of said code, all relating to the con-
struction and permanent financing of new regional jail, juvenile
detention and correctional facilities; providing for the permanent
financing of new regional jail and juvenile detention facilities;
authorizing the return of certain investment capital to the invest-
ment management board; authorizing the issuance of bonds by the
West Virginia economic development authority to prepay certain
investment capital and to finance the construction of new regional
jail and juvenile detention facilities; and providing for the
dedication and transfer of certain amounts from the insurance tax
fund to the regional jail and correctional facility debt service
fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

33. Insurance.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-21. Investment with regional jail and correctional facility
authority.

1 (a) The Legislature finds and declares:
(1) That the supreme court of appeals has determined and ordered that the constitution of this state imposes a duty on behalf of the state to make significant improvements in the jail and correctional facility system, including the duty to make capital improvements to facilities and to pay for the cost of those improvements;

(2) That construction of capital improvements requires that the cost of the facilities be financed over time; that capital improvements cannot be funded out of the current year appropriations of the Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit;

(3) That while the supreme court of appeals is empowered to interpret the laws, including the constitution of the state, section one, article ten of the constitution grants to the Legislature the power of taxation; section fifty-one, article six of the constitution grants to the Legislature the power of appropriation; and section one, article five of the constitution prohibits any branch of government from exercising powers properly belonging to another;

(4) That the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in jails and correctional facilities, is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers;

(5) That the decision of the supreme court of appeals, imposing a duty on the state to construct and pay for capital improvements to jails and correctional facilities arising out of the Bill of Rights of the United States constitution declared
ratified in the year one thousand seven hundred ninety-one, and
the state constitution of the year one thousand eight hundred
sixty-three, constitutes a prior liability of the state within the
meaning of section four, article ten of the constitution and an
exception to the constitutional limitation on contracting state
debt;

(6) That the construction of capital improvements of jail
and correctional facilities may be funded through funds
available for investment through the West Virginia investment
management board, invested in such a manner as to be assured
as high a rate of return as would be earned if these funds were
otherwise invested, and repaid by the state as provided in this
article.

(b) The investment management board shall upon request
of the regional jail and correctional facility authority transfer
moneys as an investment, from funds available for investment
from the public employees retirement system, to the regional
jail and correctional facility authority. The amount transferred
may not exceed one hundred fifty million dollars in the aggre-
gate and shall be used for the purposes of financing construc-
tion of regional jails, correctional facilities, juvenile detention
facilities, juvenile correctional facilities, or extensions, renov-
ations, improvements or additions thereto, or for the replacement
or renovation of existing facilities. If the board has loaned
money to the state building commission under subsection (b),
section nineteen of this article, the total amount loaned shall be
repaid to the board from funds made available under the
investment made pursuant to this section. Prior to the expendi-
ture of any of the funds, the regional jail and correctional
facility authority shall certify to the joint committee on govern-
ment and finance a list of projects that are to be funded from the
invested funds. This certified list may not thereafter be altered
or amended other than by legislative enactment. Funds shall be
invested with the regional jail and correctional facility authority as requested by the regional jail and correctional facility authority. The money invested shall earn a return at a rate equal to the annualized rate of return earned by the core fixed-income portfolio of the public employees retirement system over the previous five years, plus one tenth of one percent: Provided, That in all events this rate of return may not be less than five percent per annum. The monthly rate of return shall be calculated every quarter. The manner and timing of the investment shall be determined by the board. The total of the amounts invested may not exceed a total of one hundred fifty million dollars during fiscal year one thousand nine hundred ninety-eight, and fiscal year one thousand nine hundred ninety-nine, cumulatively. The authority to make the investment authorized by this section expires on the thirtieth day of June, one thousand nine hundred ninety-nine.

(c) There is created in the state treasury a regional jail and correctional facility investment fund dedicated to the payment of investment earnings and the return of capital invested under this section. The treasurer shall administer the fund. The fund is an interest-bearing account with interest earned credited to and deposited back into the fund. The fund consists of amounts required to be deposited by section fourteen, article three, chapter thirty-three of this code.

(d) The treasurer shall, monthly, transfer amounts from the regional jail and correctional facility investment fund to the board that are sufficient to allow investment earnings to be paid and the capital invested returned in substantially equal amounts by the thirty-first day of August, two thousand twenty-three: Provided, That the amount of investment earnings paid and the capital invested returned during the fiscal year beginning the first day of July, one thousand nine hundred ninety-eight, may not exceed ten million dollars. Payment representing invest-
ment earnings and the return of capital invested shall begin six
months from the date the initial funds are invested, or by the
tenth day of January, one thousand nine hundred ninety-nine,
whichever is later.

(e) The board shall calculate the amount of the projected
annual investment earnings to be paid and the capital invested
to be returned and certify the amount to the treasurer on the first
day of December of each year, until all investment earnings are
paid and the total capital invested is returned.

(f) As a condition precedent to the transfer and investment
of moneys by the investment management board pursuant to
subsection (b) of this section, either the investment manage-
ment board or the regional jail and correctional authority shall
have first caused a judicial determination to be made by an
appropriate action initiated in the West Virginia supreme court
of appeals regarding the transfer of moneys by the investment
management board to the regional jail and correctional facility
authority as an investment from funds available for investment
from the public employees retirement system, and to otherwise
determine the constitutionality of the provisions of Enrolled
House Bill 4702, as enacted by the Legislature in the year one
thousand nine hundred ninety-eight. This judicial determination
shall be brought as soon as practicable, but not later than thirty
days following the effective date of the amendments to this
section made by the Legislature in the year one thousand nine
hundred ninety-eight.

(g) The Legislature recognizes the fiduciary liability and
responsibility imposed on the board by this article and by
article six, chapter forty-four of this code. The board, its
trustees and employees, have no liability, either personally or
corporately with respect to the investment provided for in this
section and the loans made under section nineteen of this
article, if the investment and loans are made in accordance with
the respective provisions of this section and section nineteen of
this article.

(b) The regional jail and correctional facility authority shall
expend the funds invested under the provisions of this section
to proceed with the projects identified pursuant to subsection
(b) of this section.

(i) The regional jail and correctional facility authority may
return the total remaining capital invested upon thirty days
written notice to the board and at the time of such return shall
pay the investment earnings accrued to the return date.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHOR-
ITY.

§31-15-6b. Special power of authority to issue bonds or notes to
repay and refinance capital investment of invest-
ment management board in regional jail and
correctional facility authority; authorizing issu-
ance of bonds or notes to finance local and re-
gional jail facilities, including juvenile detention
centers; creation of regional jail and correctional
facility debt service fund.

(a) The Legislature finds and declares that the supreme
court of appeals has determined and ordered that the constitu-
tion of this state imposes a duty on behalf of the state to make
significant improvements in the jail and correctional facility
system, including the duty to make capital improvements to
facilities and to pay for the cost of those improvements; that
construction of capital improvements requires that the cost of
the facilities be financed over time; that capital improvements
cannot be funded out of current year appropriations of the
Legislature; and that section fifty-one, article six of the constitution prohibits the Legislature amending the budget bill so as to create a deficit; that the enacting of new taxes, or the diversion of revenues from other essential departments and functions of government, in order to support capital improvements in jails and correctional facilities, including juvenile detention centers, is not in the interests of the people of the state represented in the Legislature, and is specifically rejected by the Legislature in its exercise of its legitimate constitutional powers; that there have been previously funded certain jail and correctional facilities through funds available for investment through the West Virginia investment management board, the proceeds of which have and are being used by the regional jail and correctional facility authority to finance the cost of capital improvements to jail and correctional facilities, the repayment of such investment being made from transfers to the regional jail and correctional facility investment fund established under section twenty-one, article six, chapter twelve of this code, from funds on deposit in the insurance tax fund established under subsection (b), section fourteen, article three, chapter thirty-three of this code, such transfers undertaken in the manner set forth in subsection (c), section fourteen, article three, chapter thirty-three of this code; that the supreme court of appeals has previously made a judicial determination that the insurance tax fund is a special revenue fund from which repayment of the investment may be made without violating any constitutional limitation on contracting state debt; that the rate of return being paid under subsection (b), section twenty-one, article six, chapter twelve for the investment is subject to annual adjustment and theretofore subject to the volatility of the financial markets and it is anticipated that the rate of return paid on such investment will be in excess of the interest rate that would be payable with respect to bonds issued under this article to repay and refinance such investment; that a lower interest rate payable
with respect to bonds issued under this article issued to repay and refinance such investment would provide sufficient money for repayment of the investment in full as well as additional money for capital expenditures for jail and correctional facilities, including juvenile detention centers, without increasing the amounts currently transferable from the insurance tax fund for repayment of the investment; and that the use of the insurance tax fund, as a special revenue fund, for the repayment of debt service on bonds or notes issued under this article to finance capital expenditures for jail and correctional facilities, including juvenile detention centers, is a means by which the state may make significant improvements to the jail and correctional facility system without enacting new taxes or diverting revenues from other essential departments and functions of government.

(b) In order to provide (1) for the repayment of all or a portion of the investment, and (2) for the financing of construction or improvements to regional jail and correctional facilities, including juvenile detention centers, bonds of the authority may be issued in accordance with the provisions of this article.

(c) There is hereby created a special revenue fund in the state treasury which is designated the "regional jail and correctional facility debt service fund." Moneys deposited into the fund shall be used to make payments of principal, redemption premium, if any, and interest payments for bonds issued for the purposes set forth in this section. Separate accounts may be established within the special revenue fund for the purpose of identification of payment of specific obligations. The fund shall consist of amounts transferred from the insurance tax fund in the manner set forth in subsection (c), section fourteen, article three, chapter thirty-three of this code. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the regional jail and
correctional facility debt service fund as may be necessary for
the protection of the prior rights of the holders of bonds issued
at different times under the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

*§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

1 (a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under section fourteen-a of this article. All taxes received by the commissioner shall be paid

*Clerk's Note: This section was also amended by H. B. 3009 (Chapter 153), which passed prior to this act.
into the insurance tax fund created in subsection (b) of this section.

(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the "insurance tax fund." This fund is not part of the general revenue fund of the state. It consists of all amounts deposited in the fund pursuant to subsection (a) of this section, sections fifteen and seventeen of this article, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the regional jail and correctional facility investment fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. Each month a lien on the revenues generated from the insurance premium tax, the annuity tax and the minimum tax, provided in this section and sections fifteen and seventeen of this article, up to a maximum amount equal to one twelfth of the projected annual principal and return is granted to the investment management board to secure the investment made with the regional jail and correctional facility authority pursuant to section twenty, article six, chapter twelve of this code. The treasurer shall, no later than the
last business day of each month, transfer amounts the treasurer
determines are not necessary for making refunds under this
article to meet the requirements of subsection (d), section
twenty-one, article six, chapter twelve of this code, to the credit
of the general revenue fund. Commencing on the first day of the
month the investment created under the provisions of section
twenty-one, article six, chapter twelve of this code, is returned
to the investment management board, the treasurer shall
dedicate and transfer from the insurance tax fund to the regional
jail and correctional facility debt service fund created under the
provisions of section six-b, article fifteen, chapter thirty-one of
this code, on or before the tenth day of each month, an amount
equal to one tenth of the projected annual principal, interest and
coverage requirements on any and all revenue bonds and
refunding bonds issued, or to be issued, after the first day of
May, two thousand one, as certified to the treasurer by the
economic development authority: Provided, however, That the
amount transferred may not exceed sixteen million dollars in
any fiscal year. In the event there are insufficient funds avail-
able in any month to transfer the amount required pursuant to
this subsection to the regional jail and correctional facility debt
service fund, the deficiency shall be added to the amount
transferred in the next succeeding month in which revenues are
available to transfer the deficiency. A lien on the revenues
generated from the insurance premium tax, the annuity tax and
the minimum tax, provided in this section and sections fifteen
and seventeen of this article, not to exceed twenty million
dollars annually, is granted to the economic development
authority to secure the bonds issued by the economic develop-
ment authority on behalf of the regional jail and correctional
facility authority pursuant to section six-b, article fifteen,
chapter thirty-one of this code. The treasurer shall, no later than
the last business day of the month in which the last annually
required transfer is made to the regional jail and correctional
CORRECTIONS

91 facility debt service fund, transfer amounts the treasurer
determines are not necessary for making transfers under this
article to meet the requirements of subsection (c), section six-b,
article fifteen, chapter thirty-one of this code, as appropriated
by the Legislature.

96 (d) The amendment to this section enacted during the
regular session of the Legislature in the year one thousand nine
hundred ninety-eight is effective on the first day of July, one
thousand nine hundred ninety-eight.

CHAPTER 67

(S. B. 696 — By Senator Love)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six, seven and twenty-five, article twenty,
chapter thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact section
four, article fifteen, chapter seventeen of said code, all relating to
eliminating obsolete provisions involving regional jail commis-
sions; and transferring certain powers and duties associated with
work by prisoners from the regional jail authority to the executive
director of the regional jail authority or his or her designee.

Be it enacted by the Legislature of West Virginia:

That sections six, seven and twenty-five, article twenty, chapter
thirty-one of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be repealed; and that section four, article
fifteen, chapter seventeen of said code be amended and reenacted to read as follows:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-4. Work by prisoners; relief of sheriffs and others from liability for injuries, etc.

1 (a) Any person convicted of a criminal offense and sentenced to confinement in a county or regional jail shall, as incident to such sentence of confinement, be required to perform labor within the jail, as a trustee or otherwise, or in and upon the buildings, grounds, institutions, roads, bridges, streams or other public works of the county or the area within which the regional jail is located if he or she meets the following criteria:

(1) Such person is at least eighteen years of age;

(2) Such person is physically and mentally sound and has not been exempted for medical reasons from such work by a licensed physician or other medical professional; and

(3) Such person is considered by the county commission, the sheriff or the executive director of the West Virginia regional jail authority or designee not to pose a threat to the community if released for work purposes.

(b) The work described in subsection (a) of this section shall be performed under the supervision, care and custody of the county commission, the executive director of the West Virginia regional jail authority or designee, the sheriff, his or her deputies, correctional officers or other persons charged with inmate supervision to perform maintenance or control litter in this state.
(c) In order to effectuate the provisions of this section, the county commission, the sheriff or the executive director of the West Virginia regional jail and correctional facility authority or designee shall promulgate rules for the safe and useful employment of inmate labor.

(d) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the executive director of the West Virginia regional jail authority or designee its members or agents, the sheriff, his or her deputies, correctional officers and agents shall be immune from liability of any kind for accidents, injuries or death to such inmate except for accident, injury or death resulting directly from gross negligence or malfeasance.

(e) The sheriff of the county in which the work is to be performed, with the approval of the county commission or the executive director of the West Virginia regional jail authority or designee, may hire or appoint any personnel necessary for the supervision of inmate labor.

(f) Nothing in this section shall be construed to allow the use of inmate labor for private projects or as contract employees of for profit businesses.

(g) Any inmate who performs work pursuant to the provisions of this section shall receive, as sole and full compensation therefor, a reduction in his or her term of incarceration of not more than twenty-five percent of the original sentence excluding any other statutorily granted “good time”. Each eight-hour period of approved work shall entitle an inmate to one day’s sentence reduction: Provided, That any “good time” earned pursuant to the provisions of this section shall be in addition to any other reduction of sentence the inmate may accumulate.
(h) Any person being held as a detainee or for contempt may voluntarily participate in such labor as provided for in this section under the terms and conditions hereinbefore set forth.

AN ACT to amend and reenact section eight, article fifteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty, chapter thirty-one by adding thereto a new section, designated section five-d, all relating to good time for jail inmates; providing that inmates of regional jails are eligible for good time for labor performed; providing that inmates of county or regional jails are eligible for good time for achieving certain educational levels; requiring director of regional jail authority to promulgate rules related to discipline of inmates; permitting sheriffs to adopt rules; and requiring that every person committed to jail receive a copy of the disciplinary rules.

Be it enacted by the Legislature of West Virginia:

That section eight, article fifteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article twenty, chapter thirty-one of said code be amended by adding thereto a new section, designated section five-d, to read as follows:
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§17-15-8. Credit on sentence for road work by county prisoner.

Every person sentenced to labor as provided for by this article and who has faithfully complied with all the rules and regulations prescribed by the sheriff or administrator of the regional jail facility governing the labor is entitled to five days’ deduction for each month’s jail sentence that is imposed upon him or her.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5d. Good time credit.

(a) Any person convicted of a criminal offense and sentenced to confinement in a county or regional jail is to be granted commutation from his or her sentence for good conduct in accordance with this section.

(b) The commutation of sentence or good time is to be deducted from the fixed term of determinate sentences. An inmate under two or more consecutive sentences is allowed good time as if the several sentences, when the maximum terms thereof are added together, were all one sentence.

(c) Every inmate sentenced to a regional jail for a term of confinement exceeding six months who, in the judgment of the administrator of the regional jail facility, faithfully complies
with all rules and regulations of the regional jail during his or her term of confinement is entitled to a deduction of five days from each month of his or her sentence. No inmate may be granted any good time under the provisions of this section for time spent on bond or for time served on parole or in any other status in which he or she is not physically incarcerated.

(d) Each inmate sentenced to a term of confinement in a county or regional jail facility who participates in a general equivalency diploma program is to be granted three days of good time for the completion of each educational literacy level, as demonstrated by achieving a passing score on standardized tests required by the department of education, and ten days of good time for completion of the requirements for a general equivalency diploma or high school diploma.

(e) The sheriff or administrator of a regional jail facility may, with the approval of the governor, allow extra good time for inmates who perform exceptional work or service.

(f) The regional jail and correctional facility authority shall promulgate disciplinary rules for the regional jail facilities. The rules are to describe prohibited acts, procedures for charging individual inmates for violations of the rules and for determining the guilt or innocence of inmates charged with the violations, and sanctions that may be imposed for the violations. Each sheriff who is responsible for operating a county jail may adopt the rules promulgated by the regional jail and correctional facility authority. For each violation by an inmate, any part or all of the good time that has been granted to the inmate may be forfeited and revoked by the sheriff or administrator of the regional jail facility. The administrator, when appropriate and with approval of the executive director, or the sheriff may restore any good time forfeited for a violation of the rules promulgated or adopted pursuant to this subsection.
(g) Each inmate sentenced to a term of confinement in a county or regional jail in excess of six months shall, within seventy-two hours of being received into a county or regional jail, be given a copy of the disciplinary rules, a statement setting forth the term or length of his or her sentence or sentences, and the time of his or her minimum discharge.

CHAPTER 69

(Com. Sub. for H. B. 2405 — By Delegates Givens, Wills, Caputo, R. Thompson, Webster and Schadler)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-a, article two, chapter fifty of said code; to amend and reenact section twenty-eight, article two, chapter sixty-one of said code; to amend article eleven of said chapter by adding a new section, designated section twenty-two; to amend and reenact section one-a, article eleven-a, chapter sixty-two of said code; to amend and reenact sections three, five, six, seven and eleven, article eleven-b of said chapter; to amend said article by adding thereto a new section, designated section thirteen; to amend said chapter by adding thereto a new article, designated article eleven-c; and to amend and reenact section nine, article twelve of said chapter, all relating to community corrections and sentencing alternatives generally; allowing imposition of community corrections program participation for convictions of driving under the influence; providing exceptions to imposition of community
corrections programs; allowing magistrate courts to impose participation in a community corrections program; requiring a preimposition hearing to determine ability to pay without undue hardship; allowing magistrates to impose home incarceration through a community corrections program; creating enhanced second offense penalty for domestic battery and assault; increasing fine for third offense domestic battery and assault; allowing diverted matters to allow enhancement; authorizing municipal judges to impose home incarceration; expanding types of allowable electronic monitoring devices; authorizing certain restitution and costs; requiring the court to consider ability to pay in assessing costs of incarceration and home incarceration fees; allocation of fees allowing circuit judges, magistrates and municipal judges to credit pre-conviction time spent on home incarceration towards a sentence; allowing county commissions to appropriate excess money from home incarceration services funds to a community corrections program; providing for the creation of community corrections programs; creating the community corrections subcommittee of the governor’s committee on crime, delinquency and corrections; creating working group on domestic violence; defining duties of the community corrections subcommittee; codifying prosecutorial authority to enter into pretrial diversion agreements; providing exceptions to prosecutorial authority to enter into pretrial diversion agreements; authorizing drug courts; providing definitions, terms and eligibility requirements for drug courts; creating the West Virginia community corrections fund as a special revenue account; requiring community criminal justice boards; requiring community criminal justice accounts; allowing judges, magistrates and municipal judges to assess a fee for the participation in or supervision of a community corrections program; authorizing the ordering of fees for participation in a community corrections program; requiring courts to consider ability to pay in assessing a participation or supervision fee; requiring a fee of persons on
probation and home incarceration to fund community corrections programs; and allowing those not under court supervision to participate in or be supervised by a community corrections program under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17C. Traffic Regulations and Laws of the Road.
50. Magistrate Courts.
61. Crimes and Their Punishment.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5.2. Driving under influence of alcohol, controlled substances or drugs; penalties.
(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or
(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.
(f) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has 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, for a first offense under this subsection, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one
hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or
(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for
an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the tenth day of June, one thousand nine hundred eighty-three.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense
against any charge of violating subsection (a), (b), (c), (d), (e),
(f) or (g) of this section.

(o) For purposes of this section, the term "controlled
substance" has the meaning ascribed to it in chapter sixty-a of
this code.

(p) The sentences provided herein upon conviction for a
violation of this article are mandatory and may not be subject
to suspension or probation: Provided, That the court may apply
the provisions of article eleven-a, chapter sixty-two of this code
to a person sentenced or committed to a term of one year or
less. An order for home detention by the court pursuant to the
provisions of article eleven-b, chapter sixty-two of this code
may be used as an alternative sentence to any period of incar-
ceration required by this section. An order for supervision or
participation in a community corrections program created
pursuant to article eleven-c, chapter sixty-two of this code may
be used as an alternative sentence to any period of incarceration
required by this section.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3a. Sentencing; probation.

(a) In addition to sentencing authority granted in other
provisions of this code to magistrate courts, magistrate courts
have authority to suspend sentences and impose periods of
unsupervised probation for a period not to exceed two years,
except for offenses for which the penalty includes mandatory
incarceration and offenses defined in sections eight and nine,
article eight-b, chapter sixty-one of this code and subsection (c),
section five, article eight-d of said chapter.
(b) Notwithstanding any other provision of law to the contrary, magistrate courts have the authority to impose periods of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code. Periods of supervision or participation in community corrections programs imposed pursuant to this subsection are not to exceed two years.

(c) Release on probation is subject to the following conditions:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this state, any other state of the United States or the United States;

(2) That he or she may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That he or she shall comply with the rules or terms prescribed by the court;

(4) That he or she shall make reasonable restitution if financially able to do so, in whole or in any part, immediately or within the period of probation: Provided, That the magistrate conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay restitution without undue hardship; and

(5) That he or she shall pay any fine and the costs assessed as the court may direct: Provided, That the magistrate conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship.
(d) On motion by the prosecuting attorney, and upon a
hearing and a finding that reasonable cause exists to believe that
a violation of any condition of probation has occurred, the
magistrate may revoke probation and order execution of the
sentence originally imposed.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
2. Crimes Against the Person.

ARTICLE 2. CRIMES AGAINST THE PERSON.


(a) Domestic battery. — Any person who unlawfully and
intentionally makes physical contact of an insulting or provok-
ing nature with his or her family or household member or
unlawfully and intentionally causes physical harm to his or her
family or household member, is guilty of a misdemeanor and,
upon conviction thereof, shall be confined in a county or
regional jail for not more than twelve months, or fined not more
than five hundred dollars, or both.

(b) Domestic assault. — Any person who unlawfully
attempts to commit a violent injury against his or her family or
household member or unlawfully commits an act which places
his or her family or household member in reasonable apprehen-
sion of immediately receiving a violent injury, is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in
a county or regional jail for not more than six months, or fined
not more than one hundred dollars, or both.

(c) Second offense. — Any person who has previously been
convicted of a violation of subsection (a) or (b) of this section,
a violation of the provisions of subsection (b) or (c), section
nine of this article where the victim was his or her family or household member or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article where the victim was his or her family or household member shall be guilty of a misdemeanor. A person convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article where the victim was his or her family or household member or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article where the victim was his or her family or household member shall be confined in a county or regional jail for not less than sixty days nor more than one year, or fined not more than one thousand dollars, or both. A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article where the victim was his or her family or household member or having previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article where the victim was his or her family or household member shall be confined in a county or regional jail for not less than thirty days nor more than six months, or fined not more than five hundred dollars, or both.
(d) Third offense. — Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section nine of this article where the victim is a family or household member or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section, a violation of the provisions of section nine of this article where the victim is a family or household member, or any combination of convictions or diversions for these offenses, is guilty of a felony if the offense occurs within ten years of a prior conviction of any of these offenses and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than five years or fined not more than two thousand five hundred dollars, or both.

(e) As used in this section, “family or household member” means “family or household member” as defined in 48-27-203 of this code.

(f) A person charged with a violation of this section may not also be charged with a violation of subsection (b) or (c), section nine of this article for the same act.

(g) No law-enforcement officer may be subject to any civil or criminal action for false arrest or unlawful detention for effecting an arrest pursuant to this section or pursuant to 48-27-1002 of this code.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.
(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person under investigation or charged with an offense against the state of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person’s attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed twenty-four months in duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in section nine, article twelve, chapter sixty-two of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of section two, article five, chapter seventeen-c of this code may
participate in a pretrial diversion program. No person charged
with a violation of the provisions of section twenty-eight,
article two of this chapter may participate in a pretrial diversion
program unless the program is part of a community corrections
program approved pursuant to the provisions of article eleven-c,
chapter sixty-two of this code. No person indicted for a felony
crime of violence against the person where the alleged victim
is a family or household member as defined in 48-27-203 of
this code or indicted for a violation of the provisions of sections
three, four or seven, article eight-b of this chapter is eligible to
participate in a pretrial diversion program. No defendant
charged with a violation of the provisions of section twenty-
eight, article two of this chapter or subsections (b) or (c),
section nine, article two of this chapter where the alleged victim
is a family or household member is eligible for pretrial diver-
sion programs if he or she has a prior conviction for the offense
charged or if he or she has previously been granted a period of
pretrial diversion pursuant to this section for the offense
charged. Notwithstanding any provision of this code to the
contrary, defendants charged with violations of the provisions
of section twenty-eight, article two, chapter sixty-one of this
code or the provisions of subsections (b) or (c), section nine,
article two of said chapter where the alleged victim is a family
or household member as defined by the provisions of 48-27-203
of this code are ineligible for participation in a pretrial diver-
sion program before the first day of July, two thousand two, and
before the community corrections subcommittee of the gover-
nor's committee on crime, delinquency and correction estab-
lished pursuant to the provisions of section two, article eleven-
c, chapter sixty-two of this code, in consultation with the
working group of the subcommittee, has approved guidelines
for a safe and effective program for diverting defendants
charged with domestic violence.
(e) The provisions of section twenty-five of this article are inapplicable to defendants participating in pretrial diversion programs who are charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code. The community corrections subcommittee of the governor's committee on crime, delinquency and correction established pursuant to the provisions of section two, article eleven-c, chapter sixty-two of this code shall, upon approving any program of pretrial diversion for persons charged with violations of the provisions of section twenty-eight, article two, chapter sixty-one of this code, establish and maintain a central registry of the participants in the programs which may be accessed by judicial officers and court personnel.

(f) (1) The chief judge of a circuit court in cooperation with the prosecuting attorneys, the public defenders, if any, in the circuit, and the community criminal justice board if the program is to be operated pursuant to the provisions of article eleven-c, chapter sixty-two of this code may establish and operate a drug court program as a diversion program or an alternative sentencing program, or both, to address offenses that stem from substance use or abuse.

(2) For the purposes of this section, "drug court program" means a program designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing offenders by increasing their likelihood for successful rehabilitation through early, continuous, and intense supervised treatment, mandatory periodic drug testing and the use of appropriate sanctions and other rehabilitation services.

(3) A drug court program is to provide, at a minimum:

(A) For successful completion of a diversion or plea agreement in lieu of incarceration;
(B) Access by all participating parties of a case to information on the offender’s progress;

(C) Vigilant supervision and monitoring procedures;

(D) Random substance abuse testing;

(E) Provisions for dealing with noncompliance, modification of the treatment plan, and revocation proceedings;

(F) For its operation only when appropriate facilities and outpatient services are available; and

(G) For payment of court costs, treatment costs, supervision fees, and program user fees by the offender, unless payment of the costs and fees would impose an undue hardship.

(4) An offender is eligible for a drug court program only if:

(A) The underlying offense does not involve a felony crime of violence, unless there is a specific treatment program available designed to address violent offenders;

(B) The offender has no prior felony conviction in this state or another state for a felony crime of violence; and

(C) The offender admits to having a substance abuse addiction.

(5) The court may provide additional eligibility criteria it considers appropriate.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
11A. Release for Work or Other Purposes.
11B. Home Incarceration Act.
11C. The West Virginia Community Corrections Act.
ARTICLE 11A. RELEASE FOR WORK OR 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 alternative 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 are to 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; or

(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 is to be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the
fine is to 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;

(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 this type of 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 remain under the administrative custody and supervision of the court’s probation officers or the county sheriff. Persons sentenced by a magistrate 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: Provided, That the judge or magistrate considers the person’s ability to pay the costs.

(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, may require the convicted person to perform duties which would be considered detrimental to the convicted person’s health as attested by a physician.
(g) No provision of this section may be construed to limit a circuit judge or magistrate’s ability to impose a period of supervision or participation in a community corrections program created pursuant to article eleven-c, chapter sixty-two of this code.

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-5. Requirements for order for home incarceration.
§62-11B-6. Circumstances under which home incarceration may not be ordered; exceptions.
§62-11B-11. Discretion of the court; provisions of article not exclusive.


As used in this article:

(1) “Home” means the actual living area of the temporary or permanent residence of an offender. The term includes, but is not limited to, a hospital, health care facility, hospice, group home, residential treatment facility and boarding house.

(2) “Monitoring device” means an electronic device that is:

(A) Limited in capability to the recording or transmitting of information regarding an offender’s presence or absence from the offender’s home and his or her use or lack of use of alcohol or controlled substances;

(B) Minimally intrusive upon the privacy of other persons residing in the offender’s home; and

(C) Incapable of recording or transmitting:

(i) Visual images;
(ii) Oral or wire communications or any auditory sound; or

(iii) Information regarding the offender’s activities while
inside the offender’s home without the offender’s knowledge or
consent.

(3) “Offender” means any adult convicted of a crime
punishable by imprisonment or detention in a county jail or
state penitentiary; or a juvenile convicted of a delinquent act
that would be a crime punishable by imprisonment or incarcera-
tion in the state penitentiary or county jail, if committed by an
adult.

§62-11B-5. Requirements for order for home incarceration.

An order for home incarceration of an offender under
section four of this article is to include, but not be limited to,
the following:

(1) A requirement that the offender be confined to the
offender’s home at all times except when the offender is:

(A) Working at employment approved by the circuit court
or magistrate, or traveling to or from approved employment;

(B) Unemployed and seeking employment approved for the
offender by the circuit court or magistrate;

(C) Undergoing medical, psychiatric, mental health
treatment, counseling or other treatment programs approved for
the offender by the circuit court or magistrate;

(D) Attending an educational institution or a program
approved for the offender by the circuit court or magistrate;

(E) Attending a regularly scheduled religious service at a
place of worship;
(F) Participating in a community work release or community service program approved for the offender by the circuit court, in circuit court cases; or

(G) Engaging in other activities specifically approved for the offender by the circuit court or magistrate.

(2) Notice to the offender of the penalties which may be imposed if the circuit court or magistrate subsequently finds the offender to have violated the terms and conditions in the order of home incarceration.

(3) A requirement that the offender abide by a schedule, prepared by the probation officer in circuit court cases, or by the supervisor or sheriff in magistrate court cases, specifically setting forth the times when the offender may be absent from the offender’s home and the locations the offender is allowed to be during the scheduled absences.

(4) A requirement that the offender is not to commit another crime during the period of home incarceration ordered by the circuit court or magistrate.

(5) A requirement that the offender obtain approval from the probation officer or supervisor or sheriff before the offender changes residence or the schedule described in subdivision (3) of this section.

(6) A requirement that the offender maintain:

(A) A working telephone in the offender’s home;

(B) If ordered by the circuit court or as ordered by the magistrate, an electronic monitoring device in the offender’s home, or on the offender’s person, or both; and
(C) Electric service in the offender's home if use of a monitoring device is ordered by the circuit court or any time home incarceration is ordered by the magistrate.

(7) A requirement that the offender pay a home incarceration fee set by the circuit court or magistrate. If a magistrate orders home incarceration for an offender, the magistrate shall follow a fee schedule established by the supervising circuit judge in setting the home incarceration fee. The magistrate or circuit judge shall consider the person's ability to pay in determining the imposition and amount of the fee;

(8) A requirement that the offender pay a fee authorized by the provisions of section four, article eleven-c of this chapter: Provided, That the magistrate or circuit judge considers the person's ability to pay in determining the imposition and amount of the fee; and

(9) A requirement that the offender abide by other conditions set by the circuit court or by the magistrate.

§62-11B-6. Circumstances under which home incarceration may not be ordered; exceptions.

(a) A circuit court or magistrate may not order home incarceration for an offender unless the offender agrees to abide by all of the requirements set forth in the court's order issued under this article.

(b) A circuit court or magistrate may not order home incarceration for an offender who is being held under a detainer, warrant or process issued by a court of another jurisdiction.

(c) A magistrate may not order home incarceration for an offender unless electronic monitoring is available and only if
the county of the offender's home has an established program
of electronic monitoring that is equipped, operated and staffed
by the county supervisor or sheriff for the purpose of supervis-
ing participants in a home incarceration program: Provided,
That electronic monitoring may not be required in a specific
case if a circuit court upon petition thereto finds by order that
electronic monitoring is not necessary.

(d) A magistrate may only order home incarceration for an
offender convicted of a crime of violence against the person if
the offender does not occupy the same home as the victim of
the crime.

(c) Home incarceration is not available as a sentence if the
language of a criminal statute expressly prohibits its applica-
tion.

(f) Notwithstanding the provisions of subsection (c) of this
section, a magistrate may order home incarceration through the
imposition of supervision or participation in a community
corrections program created pursuant to article eleven-c,
chapter sixty-two of this code.


All home incarceration fees ordered by the circuit court
pursuant to subdivision seven, section five of this article are to
be paid to the circuit clerk, who shall monthly remit the fees to
the sheriff. All home incarceration fees ordered by a magistrate
pursuant to subdivision seven, section five of this article are to
be paid to the magistrate court clerk, who shall monthly remit
the fees to the county sheriff. The county sheriff shall establish
a special fund designated the home incarceration services fund,
in which the sheriff shall deposit all home incarceration fees
collected pursuant to this section and remitted by the clerks.
The county commission shall appropriate money from the fund
to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates or for community corrections programs, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

§62-11B-11. Discretion of the court; provisions of article not exclusive.

(a) Home incarceration pursuant to the provisions of this article may be imposed at the discretion of the circuit court or magistrate court as an alternative means of incarceration for any offense. Except for offenses for which the penalty includes mandatory incarceration, home incarceration may not be considered an exclusive means of alternative sentencing.

(b) Upon conviction of a person, the circuit court, magistrate court or municipal court may, in its discretion, grant credit for time spent on home incarceration as a condition of bail toward any sentence imposed, if the person is found to have complied with the terms of bail.


Notwithstanding any provision of this article to the contrary, when a person is convicted under a municipal ordinance for which a period of incarceration may be imposed, the municipal court may enter an order for home incarceration as an alternative sentence to incarceration in a county or regional jail. A home incarceration sentence ordered by a municipal court pursuant to the provisions of this section is subject to the same requirements and conditions as a home incarceration
sentence imposed by a circuit court or magistrate court pursuant to the provisions of this article. All home incarceration fees ordered by the municipal court pursuant to subdivision (7), section five of this article are to be paid to the municipal clerk, who shall monthly remit the fees to the sheriff.

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-1. Legislative intent.
§62-11C-3. Duties of the governor’s committee and the community corrections subcommittee.
§62-11C-4. Special revenue account.
§62-11C-5. Establishment of programs.
§62-11C-7. Supervision or participation fee.

§62-11C-1. Legislative intent.

(a) The Legislature hereby declares that the purpose of this article is to enable any county or Class I or II municipality or any combination of counties and Class I or II municipalities to develop, establish and maintain community-based corrections programs to provide the judicial system with sentencing alternatives for those offenders who may require less than institutional custody.

(b) The goals of developing community-based corrections programs include:

(1) Allowing individual counties or combinations of a county or counties and a Class I or II municipality greater flexibility and involvement in responding to the problem of crime in their communities;
(2) Providing more effective protection of society and promoting efficiency and economy in the delivery of correctional services;

(3) Providing increased opportunities for offenders to make restitution to victims of crime through financial reimbursement;

(4) Permitting counties or combinations of a county or counties and a Class I or II municipality to operate programs specifically designed to meet the rehabilitative needs of offenders;

(5) Providing appropriate sentencing alternatives with the goal of reducing the incidence of repeat offenders;

(6) Permitting counties or combinations of a county or counties and a Class I or II municipality to designate community-based programs to address local criminal justice needs;

(7) Diverting offenders from the state regional jail or correctional facilities by punishing them with community-based sanctions, thereby reserving state regional jail or correctional facilities for those offenders who are deemed to be most dangerous to the community; and

(8) Promoting accountability of offenders to their community.


(a) A community corrections subcommittee of the governor's committee on crime, delinquency and correction is hereby created and assigned responsibility for screening community corrections programs submitted by community criminal justice boards for approval for funding by the governor's committee and for making recommendations as to the disbursement of
funds for approved community corrections programs. The subcommittee is to be comprised of fifteen members of the governor's committee including: a representative of the division of corrections, a representative of the regional jail and correctional facility authority, a person representing the interests of victims of crime, an attorney employed by a public defender corporation, an attorney who practices criminal law, a prosecutor and a representative of the West Virginia coalition against domestic violence. At the discretion of the West Virginia supreme court of appeals, the administrator of the supreme court of appeals, a probation officer and a circuit judge may serve on the subcommittee as ex officio, nonvoting members.

(b) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitute a quorum.

(c) A working group of the community corrections subcommittee is hereby created to study safe and effective pretrial diversion programs for persons charged with domestic violence offenses and to recommend, based upon its findings, programs considered to be safe and effective in reducing incidences of domestic violence and educating persons charged with a domestic violence offense. The working group is to be comprised of the following members of the subcommittee: (1) If approved by the West Virginia supreme court of appeals, the circuit judge; (2) the prosecuting attorney; (3) the public defender or the criminal defense attorney; (4) the probation officer; and (5) the representative of the West Virginia coalition against domestic violence. The working group is to report its findings and recommendations to the subcommittee on or before the first day of July, two thousand two.
§62-11C-3. Duties of the governor's committee and the community corrections subcommittee.

(a) Upon recommendation of the community corrections subcommittee, the governor's committee shall propose for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, emergency and legislative rules to:

1. Establish standards for approval of community corrections programs submitted by community criminal justice boards;

2. Establish minimum standards for community corrections programs to be funded, including requiring annual program evaluations;

3. Make any necessary adjustments to the fees established in section four of this article;

4. Establish reporting requirements for community corrections programs; and

5. Carry out the purpose and intent of this article.

(b) Upon recommendation of the community corrections subcommittee, the governor's committee shall:

1. Maintain records of community corrections programs including the corresponding community criminal justice board contact information and annual program evaluations, when available;

2. Seek funding for approved community corrections programs from sources other than the fees collected pursuant to section four of this article; and
(3) Provide funding for approved community corrections programs, as available.

c) The governor's committee shall submit, on or before the thirtieth day of September of each year, to the governor, the Speaker of the House of Delegates, the President of the Senate, and upon request to any individual member of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.

§62-11C-4. Special revenue account.

(a) There is hereby created in the state treasury a special revenue account to be known as the "West Virginia community corrections fund." Expenditures from the fund are for the purposes set forth in subsection (d) of this section 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 two, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. The West Virginia community corrections fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) Beginning on the effective date of this article, in addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed thirty dollars per month, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on probation.
This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk or circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the state treasurer to be credited to the West Virginia community corrections fund.

(c) Beginning on the effective date of this article, in addition to the fee required in section five, article eleven-b of this chapter, a fee not to exceed five dollars per day, unless modified by legislative rule as provided in section three of this article, is also to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person’s ability to pay in determining the imposition and amount of the fee. The circuit clerk, magistrate clerk or municipal court clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk or municipal court clerk shall forward the amount deposited to the state treasurer to be credited to the West Virginia community corrections fund.

(d) The moneys of the West Virginia community corrections fund are to be disbursed by the governor's committee on crime, delinquency and correction, upon recommendation by the community corrections subcommittee, for the funding of community corrections programs and to pay expenses of the governor’s committee in administering the provisions of this article, which expenses may not in any fiscal year exceed ten
percent of the funds deposited to the special revenue account during that fiscal year.

(e) Any disbursements from the West Virginia community corrections fund allocated for community corrections programs by the governor's committee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

(f) Nothing in this article may be construed to mandate funding for the West Virginia community corrections fund or to require any appropriation by the Legislature.

§62-11C-5. Establishment of programs.

(a) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate community corrections programs, as provided for in this section, to be used as alternative sentencing options for those offenders sentenced within the jurisdiction of the county or counties which establish and operate the program.

(b) Any county or combination of counties or a county or counties and a Class I or II municipality that seek to establish programs as authorized in this section shall submit plans and specifications for the programs to be established, including proposed budgets, for review and approval by the community corrections subcommittee established in section three of this article.

(c) Any county or combination of counties or a county or counties and a Class I or II municipality may establish and operate an approved community corrections program to provide
alternative sanctioning options for an offender who is convicted
of an offense for which he or she may be sentenced to a period
of incarceration in a county or regional jail or a state correc-
tional facility and for which probation or home incarceration
may be imposed as an alternative to incarceration.

(d) Community corrections programs authorized by
subsection (a) of this section may provide, but are not limited
to providing, any of the following services:

(1) Probation supervision programs;

(2) Day fine programs;

(3) Community service restitution programs;

(4) Home incarceration programs;

(5) Substance abuse treatment programs;

(6) Sex offender containment programs;

(7) Licensed domestic violence offender treatment pro-
grams;

(8) Day reporting centers;

(9) Educational or counseling programs; or

(10) Drug courts.

(e) A county or combination of counties or a county or
counties and a Class I or II municipality which establish and
operate community corrections programs as provided for in this
section may contract with other counties to provide community
corrections services.
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(f) For purposes of this section, the phrase "may be sentenced to a period of incarceration" means that the statute defining the offense provides for a period of incarceration as a possible penalty.

(g) No provision of this article may be construed to allow a person participating in or under the supervision of a community corrections program to earn "good time" or any other reduction in sentence.


(a) Each county or combination of counties or a county or counties and a Class I or II municipality that seek to establish community-based corrections services shall establish a community criminal justice board.

(b) The community criminal justice board is to consist of no more than fifteen voting members.

(c) All members of the community criminal justice board are to be residents of the county or counties represented.

(d) The community criminal justice board is to consist of the following members:

   (1) The sheriff or chief of police, or if the board represents more than one county or municipality, at least one sheriff or chief of police from the counties represented;

   (2) The prosecutor, or if the board represents more than one county, at least one prosecutor from the counties represented;

   (3) If a public defender corporation exists in the county or counties represented, at least one attorney employed by any public defender corporation existing in the counties represented
or, if no public defender office exists, one criminal defense attorney from the counties represented;

(4) One member to be appointed by the local board of education, or if the board represents more than one county, at least one member appointed by a board of education of the counties represented;

(5) One member with a background in mental health care and services to be appointed by the commission or commissions of the county or counties represented by the board;

(6) Two members who can represent organizations or programs advocating for the rights of victims of crimes with preference given to organizations or programs advocating for the rights of victims of the crimes of domestic violence or driving under the influence; and

(7) Three at-large members to be appointed by the commission or commissions of the county or counties represented by the board.

(e) At the discretion of the West Virginia supreme court of appeals, any or all of the following people may serve on a community criminal justice board as ex officio, nonvoting members:

(1) A circuit judge from the county or counties represented;

(2) A magistrate from the county or counties represented;

or

(3) A probation officer from the county or counties represented.

(f) Community criminal justice boards may:
(1) Provide for the purchase, development and operation of community corrections services;

(2) Coordinate with local probation departments in establishing and modifying programs and services for offenders;

(3) Evaluate and monitor community corrections programs, services and facilities to determine their impact on offenders; and

(4) Develop and apply for approval of community corrections programs by the governor’s committee on crime, delinquency and correction.

(g) If a community criminal justice board represents more than one county, the appointed membership of the board, excluding any ex officio members, shall include an equal number of members from each county, unless the county commissions of each county agree in writing otherwise.

(h) If a community criminal justice board represents more than one county, the board shall, in consultation with the county commissions of each county represented, designate one county commission as the fiscal agent of the board.

(i) Any political subdivision of this state operating a community corrections program shall, regardless of whether or not the program has been approved by the governor’s committee on crime, delinquency and correction, provide to the governor’s committee required information regarding the program’s operations as required by legislative rule.

§62-11C-7. Supervision or participation fee.

(a) A circuit judge, magistrate or municipal court judge may require the payment of a supervision or participation fee from any person required to be supervised by or participate in
a community corrections program. The circuit judge, magistrate or municipal court judge shall consider the person’s ability to pay in determining the imposition and amount of the fee.

(b) All fees ordered by the circuit court pursuant to this section are to be paid to the circuit clerk, who shall monthly remit the fees to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article. All fees ordered by the magistrate court pursuant to this section are to be paid to the magistrate clerk, who shall monthly remit the fees to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article. All fees ordered by the municipal court judge pursuant to this section are to be paid to the municipal court clerk who shall monthly remit the fees to the treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article.


(a) The treasurer of the county designated as the fiscal agent for the board pursuant to section six of this article shall establish a separate fund designated the community criminal justice fund. He or she shall deposit all fees remitted by the municipal, magistrate and circuit clerks pursuant to section seven of this article and all funds appropriated by a county commission pursuant to section seven, article eleven-b of this chapter, or any other provision of this code and all funds provided by the governor’s committee for approved community corrections programs in the community criminal justice fund. Funds in the community criminal justice account are to be expended by order of the designated county’s commission upon recommendation of the community criminal justice board in furtherance of the operation of an approved community corrections program.
(b) A county commission representing the same county as a community criminal justice board may require the community criminal justice board to render an accounting, at intervals the county commission may designate, of the use of money, property, goods and services made available to the board by the county commission and to make available at quarterly intervals an itemized statement of receipts and disbursements, and its books, records and accounts during the preceding quarter, for audit and examination pursuant to article nine, chapter six of this code.


(a) Subject to the availability of community corrections programs in the county, a written pretrial diversion agreement, entered into pursuant to the provisions of section twenty-two, article eleven, chapter sixty-one of this code, may require participation or supervision in a community corrections program as part of the prosecution and resolution of charges.

(b) Any pretrial diversion program for a defendant charged with a violation of the provisions of section twenty-eight, article two, chapter sixty-one of this code, subsections (b) or (c), section nine, article two of said chapter where the alleged victim is a family or household member or the provisions of section two, article five, chapter seventeen-c of this code is to require the person charged to appear before the presiding judge or magistrate and either acknowledge his or her understanding of the terms of the agreement or tender a plea of guilty or nolo contendere to the charge or charges. Upon the defendant’s motion, the court shall continue the matter for the period of time necessary for the person charged to complete the pretrial diversion program. If the person charged successfully completes the pretrial diversion program, the matter is to be
resolved pursuant to the terms of the pretrial diversion agreement. If the person charged fails to successfully complete the pretrial diversion program, the matter, if no plea of guilty or nolo contendere has been tendered, is to be returned to the court's docket for resolution. If the person charged has tendered a plea of guilty or nolo contendere and fails to successfully complete the pretrial diversion program, the court shall accept the tendered plea of guilty or nolo contendere and proceed to sentencing.

(c) No provision of this article may be construed to limit the prosecutor's discretion to prosecute an individual who has not fulfilled the terms of a written pretrial diversion agreement by not completing the required supervision or participation in a community corrections program.

ARTICLE 12. PROBATION AND PAROLE.


(a) Release on probation is conditioned upon the following:

(1) That the probationer may not, during the term of his or her probation, violate any criminal law of this or any other state or of the United States;

(2) That he or she may not, during the term of his or her probation, leave the state without the consent of the court which placed him or her on probation;

(3) That he or she complies with the conditions prescribed by the court for his or her supervision by the probation officer;

(4) That in every case wherein the probationer has been convicted of an offense defined in section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d of
said chapter, against a child, the probationer may not live in the
same residence as any minor child, nor exercise visitation with
any minor child and has no contact with the victim of the
offense: Provided, That the probationer may petition the court
of the circuit wherein he or she was convicted for a modifica-
tion of this term and condition of his or her probation and the
burden rests upon the probationer to demonstrate that a modifi-
cation is in the best interest of the child;

(5) That the probationer be required to pay a fee, not to
exceed twenty dollars per month to defray costs of supervision:
Provided, That the court conducts a hearing prior to imposition
of probation and makes a determination on the record that the
offender is able to pay the fee without undue hardship. All
moneys collected as fees from probationers pursuant to this
subdivision are to be deposited with the circuit clerk who shall,
on a monthly basis, remit the moneys collected to the state
treasurer for deposit in the state general revenue fund; and

(6) That the probationer is required to pay the fee described
in section four, article eleven-c of this chapter: Provided, That
the court conducts a hearing prior to imposition of probation
and makes a determination on the record that the offender is
able to pay the fee without undue hardship.

(b) In addition the court may impose, subject to modifica-
tion at any time, any other conditions which it may deem
advisable, including, but not limited to, any of the following:

(1) That he or she make restitution or reparation, in whole
or in part, immediately or within the period of probation, to any
party injured by the crime for which he or she has been con-
victed: Provided, That the court conducts a hearing prior to
imposition of probation and makes a determination on the
record that the offender is able to pay restitution without undue hardship;

(2) That he or she pay any fine assessed and the costs of the proceeding in installments as the court may direct: Provided, That the court conducts a hearing prior to imposition of probation and makes a determination on the record that the offender is able to pay the costs without undue hardship;

(3) That he or she make contribution from his or her earnings, in sums as the court may direct, for the support of his or her dependents; and

(4) That he or she, in the discretion of the court, be required to serve a period of confinement in the county jail of the county in which he or she was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case may the period of confinement exceed six consecutive months. The court has the authority to sentence the defendant within the six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant to the defendant intermittent periods of release in order that he or she may work at his or her employment or for other reasons or purposes as the court may deem appropriate: Provided, That the provisions of article eleven-a of this chapter do not apply to intermittent periods of confinement and release except to the extent that the court may direct. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.
CHAPTER 70

(Com. Sub. for S. B. 579 — By Senators Love and Hunter)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation; and transfer of youths by commissioner of corrections.

Be it enacted by the Legislature of West Virginia:

That section six, article four, 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 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

The judge of any court with original criminal jurisdiction may suspend the imposition of sentence of any young adult, as defined in this section, convicted of or pleading guilty to a felony offense, other than an offense punishable by life imprisonment, including, but not limited to, felony violations of the provisions of chapter seventeen-c of this code, who has attained his or her eighteenth birthday but has not reached his or her
twenty-third birthday at the time of the sentencing by the court and commit the young adult to the custody of the West Virginia commissioner of corrections to be assigned to a center. Young adult offenders who have previously been committed to a young adult offender center are not eligible for commitment to this program. The period of confinement in the center shall be for a period of not less than six months, or longer to successfully complete the program requirements set by the warden, but in any event the period of confinement may not exceed two years. The court shall order a presentence investigation to be conducted and provide the warden with a copy of the presentence investigation report, along with the commitment order.

If, in the opinion of the warden, the young adult offender proves to be an unfit person to remain in the center, the offender shall be returned to the committing court to be dealt with further according to law. In that event, the court may sentence the offender for the crime for which the offender was convicted. In his or her discretion, the judge may allow the defendant credit on the sentence for time the offender spent in the center.

A young adult offender shall be returned to the jurisdiction of the court which originally committed the offender when, in the opinion of the warden, the young adult offender has satisfactorily completed the center training program. The offender is then eligible for probation for the offense with which the offender is charged and the judge of the court shall immediately place the offender on probation. In the event the offender’s probation is subsequently revoked, the judge shall impose the sentence the young adult offender would have originally received had the offender not been committed to the center and subsequently placed on probation. The court shall, however, give the offender credit on his or her sentence for the time spent in the center.
AN ACT to amend and reenact section three-cc, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhanced emergency telephone systems established by county commissions; permitting the fee imposed upon consumers of local exchange service within the county for an enhanced emergency telephone system to be used for any administration and operation costs associated with the system, and subjecting the county answering points' books and records to an annual examination by the state auditors office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers, and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for the systems
and for roadway conversion systems; authority to contract with the telephone companies for billing of fee.

(a) In addition to possessing the authority to establish an emergency telephone system pursuant to section four, article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia enhanced 911 council concerning the operation of all county emergency communications centers or emergency telephone systems centers in the state, including, but not limited to, recommendations for:

(1) Minimum standards for emergency telephone systems and emergency communications centers;

(2) Minimum standards for equipment used in any center receiving telephone calls of an emergency nature and dispatching emergency service providers in response to that call and which receives 911 moneys or has basic 911 service funded through its county commission; and

(3) Minimum standards for education and training of all personnel in emergency communications centers.

(b) A county commission may impose a fee upon consumers of local exchange service within that county for an enhanced emergency telephone system and associated electronic equipment and for the conversion of all rural routes to city-type addressing, as provided in section three of this article. The fee
is to be used solely and directly for the capital, installation, administration, operation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing and including the reasonable costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point.

(c) A county commission may contract with the telephone company or companies providing local exchange service within the county for the telephone company or companies to act as the billing agent or agents of the county commission for the billing of the fee imposed pursuant to subsection (b) of this section. The cost for the billing agent services may be included as a recurring maintenance cost of the enhanced emergency telephone system.

Where a county commission has contracted with a telephone company to act as its billing agent for enhanced emergency telephone system fees, all competing local exchange telephone companies with customers in that county shall bill the enhanced emergency telephone system fees to its respective customers located in that county, and shall remit the fee. It may deduct its respective costs for billing in the same manner as the acting billing agent for the enhanced emergency telephone system fee.

(d) A county commission of any county with an emergency communications center or emergency telephone system may establish standards for alarm systems, including security, fire and medical alarms.

(e) The books and records of all county answering points that benefit from the imposition of the local exchange service fees shall be subject to annual examination by the state auditor's office.
AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-hh; and to amend and reenact section eighteen, article twelve, chapter eight of said code, all relating to authorizing county commissions, municipalities, building commissions and development authorities to sell and lease property to both the state and federal governments.

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-hh; and that section eighteen, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.
§7-1-3hh. Authority to lease, sell or dispose of county property to the state, federal government or an instrumentality thereof.

Every county commission, building commission created pursuant to article thirty-three, chapter eight of this code and development authority created pursuant to article twelve of this chapter is authorized to sell, lease as lessor or dispose of any of its real or personal property or any interest therein or any part thereof, as authorized in article five, chapter one of this code, or to the United States of America or any agency or instrumentality thereof, or to the state or any agency or instrumentality thereof, for a public purpose for an adequate consideration, without considering alone the commercial or market value of such property.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART VI. SALE, LEASE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale, lease or disposition of other municipal property.

(a) Every municipality, municipal building commission created pursuant to article thirty-three of this chapter and municipal development authority created pursuant to article twelve, chapter seven of this code is authorized to sell, lease as lessor or dispose of any of its real or personal property or any interest therein or any part thereof (other than a public utility which shall be sold or leased in accordance with the provisions of section seventeen of this article), as authorized in article five,
(b) In all other cases involving a sale, any municipality is hereby empowered and authorized to sell any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration, the property to be sold at public auction at a place designated by the governing body, but before making any sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, 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 the publication shall be the municipality. The requirements of notice and public auction shall not apply to the sale of any one item or piece of property of less value than one thousand dollars and under no circumstances shall the provisions of this section be construed as being applicable to any transaction involving the trading in of municipally owned property on the purchase of new or other property for the municipality and every municipality shall have plenary power and authority to enter into and consummate any trade-in transaction.

(c) In all other cases involving a lease, any municipality is hereby empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof for a fair and adequate consideration and for a term not exceeding fifty years. Every lease shall be authorized by resolution of the governing body of the municipality, which resolution may specify terms and conditions which must be contained in such lease: Provided, That before any proposed lease is authorized by resolution of the governing body, a public
hearing on the proposed lease shall be held by the governing
body after notice of the date, time, place and purpose of the
public hearing has been published as a Class I legal advertise-
ment in compliance with the provisions of article three, chapter
fifty-nine of this code and the publication area for the publica-
tion shall be the municipality. The power and authority granted
in this subsection shall be in addition to, and not in derogation
of, any power and authority vested in any municipality under
any constitutional or other statutory provision now or hereafter
in effect.

CHAPTER 73

(S. B. 265 — By Senators Rowe, McCabe, Mitchell,
Burnette, Hunter, Love and Caldwell)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twenty-four,
relating to permitting the sheriff to commence civil actions in his
or her official capacity or on behalf of the county government
without the payment of filing fees, costs, security or bond
otherwise required of other civil litigants; and upon successful
recovery of the costs by the sheriff, he or she shall remit them to
the appropriate official.

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

ARTICLE 5. FISCAL AFFAIRS.

§7-5-24. Sheriff may commence civil action without paying fees and costs; fees and costs recoverable from defendants after completion of litigation.

1 The sheriff will not be required to pay any filing fee, cost, bond or security, as may otherwise be required of other civil litigants by provisions of this code, in any action in which the sheriff commences the action in his or her official capacity or on behalf of the county government: Provided, That where the sheriff or county government prevails in the action and any filing fees, costs, bond or security are recovered from the opposing party, the sheriff shall pay therefrom the fees, costs, bond or security to the officer who otherwise would have been entitled thereto but for the provisions of this section.

CHAPTER 74

(S. B. 214 — By Senators Wooton, Caldwell, Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Snyder and Deem)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter seven 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 authorizing county commissions to require part-time prosecuting attorneys to serve full time.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 four-a, to read as follows:

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

1. Notwithstanding any provision of this code to the contrary, in any county which has a part-time prosecuting attorney the county commission may, on the request of the prosecuting attorney, find that such facts and circumstances exist that require the prosecuting attorney to devote full time to his or her public duties. If the county commission makes such a finding, by proper order adopted and entered, it shall require the prosecuting attorney to devote full time to his or her public duties and the county commission shall then compensate the prosecuting attorney at the same rate of compensation established for a prosecuting attorney in a Class V county: Provided, That nothing contained herein may be interpreted to affect the status of a prosecuting attorney who has heretofore, by proper order so entered, become full time.
AN ACT to amend article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to joint undertakings by county development authorities.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 nine-a, to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9a. Joint undertakings by county development authorities.

(a) The Legislature hereby finds and declares that the citizens of the state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, county economic development authorities should share in the tax revenues derived from joint programs regardless of the county in which they are located.

(b) Any three or more county development authorities may contract to share expenses for and revenues derived from joint
9 economic development projects within their respective geo-
10 graphic territories. Notwithstanding any other section of the
11 code to the contrary, county development authorities may
12 contract to distribute on a pro rata basis proceeds derived from
13 joint economic development projects.

14 (c) Each county development authority participating in a
15 joint economic development project contract must contribute at
16 least fifteen thousand dollars in cash to the project.

17 (d) In the event that a county development authority desires
18 to withdraw from participation, then the remaining participants
19 may jointly choose a successor. No withdrawing county
20 development authority shall be entitled to the return of any
21 money or property advanced to the project, unless specifically
22 provided for in the contract.

23 (e) In the event that a joint economic development project
24 is terminated, all funds, property and other assets shall be
25 returned to the county development authorities in the same
26 proportion as contributions of funds, property and other assets
27 were made by the county development authorities.

28 (f) A grant, which may not exceed one hundred thousand
29 dollars, may be made by the West Virginia development office
30 to any county economic development authority which enters
31 into such contracts.

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CHAPTER 76

(Com. Sub. for S. B. 428 — By Senators Snyder and Unger)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section six, article twenty, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-b, article three, chapter twenty-nine of said code, all relating to inspection and standards of inspecting structures; removing the requirement that counties, as a prior condition to assessing levy impact fees, are required to include within their building permit plan that they will maintain a systematic and ongoing inspection of existing structures; and permitting counties and municipalities to adopt the state building code only to the extent that the code is prospective only and not retroactive in its application.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.
29. Miscellaneous Boards and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-6. Criteria and requirements necessary to implement collection of fees.

1 (a) As a prerequisite to authorizing counties to levy impact fees related to population growth and public service needs, counties shall meet the following requirements:
(1) A demonstration that population growth rate history as determined from the most recent base decennial census counts of a county, utilizing generally approved standard statistical estimate procedures, in excess of one percent annually averaged over a five-year period since the last decennial census count; or a demonstration that a total population growth rate projection of one percent per annum for an ensuing five-year period, based on standard statistical estimate procedures, from the current official population estimate of the county;

(2) Adopting a countywide comprehensive plan;

(3) Reviewing and updating any comprehensive plan at no less than five-year intervals;

(4) Drafting and adopting a comprehensive zoning ordinance;

(5) Drafting and adopting a subdivision control ordinance;

(6) Keeping in place a formal building permit and review system which provides a process to regulate the authorization of applications relating to construction or structural modification. The county shall adopt, pursuant to section three-n, article one of this chapter, the state building code into any such building permit and review system; and

(7) Providing an improvement program which shall include:

(A) Developing and maintaining a list within the county of particular sites with development potential;

(B) Developing and maintaining standards of service for capital improvements which are fully or partially funded with revenues collected from impact fees; and
(C) Lists of proposed capital improvements from all areas, containing descriptions of any such proposed capital improvements, cost estimates, projected time frames for constructing such improvements and proposed or anticipated funding sources.

(b) Capital improvement programs may include provisions to provide for the expenditure of impact fees for any legitimate county purpose. This may include the expenditure of fees for partial funding of any particular capital improvement where other funding exists from any source other than the county or exists in combination with other funds available to the county: Provided, That for such expenditures to be considered legitimate, no county or other local authority may deny or withhold any reasonable benefit that may be derived therefrom from any development project for which such impact fee or fees have been paid.

(c) Capital improvement programs for public elementary and secondary school facilities may include provisions to spend impact fees based on a computation related to the following: (1) The existing local tax base; and (2) the adjusted value of accumulated infrastructure investment, based on net depreciation, and any remaining debt owed thereon. Any such computation must establish the value of any equity shares in the net worth of an impacted school system facility, regardless of the existence of any need to expand such facility. Impact fee revenues may only be used for capital replacement or expansion.

(d) Additional development areas may be added to any plan or capital improvements program provided for hereunder if a county government so desires. The standards governing the construction or structural modification for any such additional
area shall not deviate from those adopted and maintained at the
time such addition is made.

(e) The county may modify annually any capital improve-
ments plan in addition to any impact fee rates based thereon,
pursuant to the following:

(1) The number and extent of development projects begun
in the past year;

(2) The number and extent of public facilities existing or
under construction;

(3) The changing needs of the general population;

(4) The availability of any other funding sources; and

(5) Any other relevant and significant factor applicable to
a legitimate goal or goals of any such capital improvement plan.

CHAPTER 29. MISCELLANEOUS
BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5b. Promulgation of rules and statewide building code.

(a) The state fire commission shall propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code to safeguard life and
property and to ensure the quality of construction of all struc-
tures erected or renovated throughout this state through the
adoption of a state building code. The rules shall be in accor-
dance with standard safe practices so embodied in widely
recognized standards of good practice for building construction
and all aspects related thereto and have force and effect in those

*Clerk's Note: This section was also amended by S. B. 630 (Chapter 130), which
passed subsequent to this act.
counties and municipalities adopting the state building code:

Provided, That each county or municipality shall have the
election to adopt the code to the extent that it is only prospec-
tive and not retroactive in its application.

(b) The state fire commission has authority to propose rules
for legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code regarding
building construction, renovation and all other aspects as
related to the construction and mechanical operations of a
structure. The rules shall be known as the “State Building
Code”.

(c) For the purpose of this section, the term “building code”
is intended to include all aspects of safe building construction
and mechanical operations and all safety aspects related thereto.
Whenever any other state law, county or municipal ordinance
or regulation of any agency thereof is more stringent or imposes
a higher standard than is required by the state building code, the
provisions of the state law, county or municipal ordinance or
regulation of any agency thereof governs if they are not
inconsistent with the laws of West Virginia and are not contrary
to recognized standards and good engineering practices. In any
question, the decision of the state fire commission determines
the relative priority of any such state law, county or municipal
ordinance or regulation of any agency thereof and determines
compliance with state building code by officials of the state,
counties, municipalities and political subdivisions of the state.

(d) Enforcement of the provisions of the state building code
is the responsibility of the respective local jurisdiction. Also,
any county or municipality may enter into an agreement with
any other county or municipality to provide inspection and
enforcement services: Provided, That any county or municipal-
ity may adopt the state building code with or without adopting
the BOCA national property maintenance code.
(e) After the state fire commission has promulgated rules as provided in this section, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

(f) The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of the rules.

(g) The provisions of the state building code relating to the construction, repair, alteration, restoration and movement of structures are not mandatory for existing buildings and structures identified and classified by the state register of historic places under the provisions of section eight, article one, chapter twenty-nine of this code or the national register of historic places, pursuant to Title XVI, section 470a of the United States Code. Prior to renovations regarding the application of the state building code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the division of culture and history, state historic preservation office. The final decision is vested in the state fire commission. Additions constructed on a historic building are not excluded from complying with the state building code.

CHAPTER 77

(H. B. 2844 — By Delegates Staton, Pino, Kominar, Frederick, Stemple and Webb)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That chapter twenty-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 twenty-six, to read as follows:

ARTICLE 26. WEST VIRGINIA COURTHOUSE FACILITIES IMPROVEMENT AUTHORITY.

§29-26-1. West Virginia courthouse facilities improvement authority created; membership.

§29-26-2. Definitions.

§29-26-3. Development of guidelines and application for funding assistance.

§29-26-4. Requirements for assistance; review of application.

§29-26-5. Powers of the authority.

§29-26-6. The courthouse facilities improvement fund.

§29-26-1. West Virginia courthouse facilities improvement authority created; membership.

(a) The West Virginia courthouse facilities improvement authority is hereby created.

(b) The authority is to consist of twelve voting members including:

(1) The president of the West Virginia sheriffs’ association, or another member of the association designated to attend in lieu of the president;
(2) One sheriff to be appointed by the president of the West Virginia sheriffs' association: Provided, That the sheriff who is appointed may not be from the same congressional district as the president;

(3) The president of the West Virginia prosecuting attorneys' association, or another member of the association designated to attend in lieu of the president;

(4) One prosecuting attorney to be appointed by the president of the West Virginia prosecuting attorneys' association: Provided, That the prosecuting attorney who is appointed may not be from the same congressional district as the president;

(5) The president of the West Virginia county and circuit clerks' association, or another member of the association designated to attend in lieu of the president;

(6) The vice president of the West Virginia county and circuit clerks' association, or another member of the association designated to attend in lieu of the vice president;

(7) One county clerk to be appointed by the president of the West Virginia county and circuit clerks' association: Provided, That the county clerk who is appointed may not be from the same congressional district as the president or vice president;

(8) One circuit clerk to be appointed by the president of the West Virginia county and circuit clerks' association: Provided, That the circuit clerk who is appointed may not be from the same congressional district as the president or vice president;

(9) The president of the West Virginia county commissioners' association, or another member of the association designated to attend in lieu of the president;
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37 (10) One county commissioner to be appointed by the president of the West Virginia county commissioners' association: Provided, That the county commissioner who is appointed may not be from the same congressional district as the president;

37 (11) The president of the West Virginia assessors' association, or another member of the association designated to attend in lieu of the president; and

38 (12) One assessor to be appointed by the president of the West Virginia assessors' association: Provided, That the assessor who is appointed may not be from the same congressional district as the president.

39 (c) The authority is to consist of eight advisory members, including:

40 (1) The president of the West Virginia judicial association, or another member of the association designated to attend in lieu of the president;

41 (2) One circuit judge to be appointed by the West Virginia judicial association: Provided, That the circuit judge who is appointed may not be from the same congressional district as the president;

42 (3) The president of the West Virginia magistrates' association, or another member of the association designated to attend in lieu of the president;

43 (4) One magistrate to be appointed by the West Virginia magistrates' association: Provided, That the magistrate who is appointed may not be from the same congressional district as the president;
(5) The president of the West Virginia family law masters’ association, or another member of the association designated to attend in lieu of the president;

(6) One family law master to be appointed by the West Virginia family law masters’ association: Provided, That the family law master who is appointed may not be from the same congressional district as the president;

(7) One member of the West Virginia Senate, to be appointed by the president of the Senate; and

(8) One member of the West Virginia House of Delegates, to be appointed by the speaker of the House of Delegates.

(d) The advisory members of the authority are nonvoting, ex officio members.

(e) The appointments are to be made as soon as possible after the effective date of this article. The terms of appointments are for four-year terms.

(f) The authority shall annually elect one of its members as chair, and shall appoint a secretary, who need not be a member of the authority and who shall keep records of its proceedings.

(g) The authority shall meet at least once every ninety days to review applications requesting funding assistance and otherwise to conduct its business, and may meet more frequently if necessary.

(h) Seven members of the authority constitute a quorum and the affirmative vote of at least a majority of those members present is necessary for any action taken by vote of the authority. No vacancy in the membership of the authority impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority.
(i) Members of the authority shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available to the authority for the purpose of reimbursement upon submission of an itemized statement.

§29-26-2. Definitions.

The following terms, wherever used or referred to in this article, have the following meaning:

(a) “Approved modifications or construction of courthouse facilities” means any modification or construction of a courthouse facility which has been recommended for assistance by the authority according to the requirements of section four of this article;

(b) “Authority” means the West Virginia courthouse facilities improvement authority;

(c) “Cost” means the cost of construction, renovation, repair and safety upgrading of courthouse facilities; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing a courthouse facility in operation; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the modification or construction of a courthouse facility; and

(d) “Courthouse facility” means buildings or structures which are occupied exclusively by offices of county and judicial officials or by courtrooms, county jails or detention centers.

§29-26-3. Development of guidelines and application for funding assistance.
(a) The authority shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the authority in evaluating any request by a county for funding assistance for the modification of an existing courthouse facility or the construction of a new county courthouse facility.

(b) The guidelines shall include the following factors:

(1) The degree of increased security of records kept by the offices of the county, circuit and magistrate court clerks in the county;

(2) The degree of increased safety for personnel whose offices are contained in the existing court facility or will be contained in the proposed court facility;

(3) The degree to which the proposal of modification or construction can correct deficiencies in compliance with building codes and with the requirements of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.;

(4) The degree of increased efficiency and modernization in the preservation of records kept by the offices of the county officers, circuit clerks and magistrate court clerks in the county;

(5) The increased efficiency and modernization of the storage of records kept by the offices of the county officers, circuit clerks and magistrate court clerks in the county;

(6) The availability of alternative sources of funding which could finance all or a part of the modification or construction of a courthouse facility;
(7) The need for the assistance of the authority to finance the modification or construction of a courthouse facility or attract other sources of funding;

(8) The applicant county’s ability to operate and maintain the courthouse facility if the modification or construction is granted assistance by the authority;

(9) The degree to which the modification or construction of a courthouse facility achieves other state or regional planning goals;

(10) The estimated date upon which the modification or construction of a courthouse facility could commence if funding were available and the estimated completion date of the modification or construction; and

(11) Other considerations the authority considers necessary or appropriate to accomplish its duties as defined in this article.

(c) The authority shall create an application form which shall be used by all counties requesting funding assistance from the authority.

(d) The application shall require the county applicant to set forth the following information:

(1) The type and proposed location of the proposed modification or construction of a courthouse facility;

(2) The estimated total cost of the proposed modification or construction of a courthouse facility;

(3) The amount of funding assistance required and the specific uses of the funding;

(4) Other sources of funding available or potentially available for the modification or construction;
(5) Information demonstrating the need for the modification or construction and that the proposed funding of the modification or construction is the most economically feasible to the completion of the modification or construction; and

(6) Any other information the authority considers necessary to enable it to recommend the type of financing, in terms of the kind, amount and source of funding, which the applicant county should pursue and which the authority should consider an appropriate investment of public funds.

§29-26-4. Requirements for assistance; review of application.

(a) No county applicant may receive any loan, loan guarantee, grant or other funding assistance for the modification or construction of a courthouse facility from the authority unless:

(1) The county applicant submits a completed application to the authority on the form prepared by the authority pursuant to section three of this article; and

(2) The authority, after having considered the application, recommends the county applicant receive a loan, loan guarantee, grant or other funding assistance for the proposed modification or construction.

(b) The authority shall, within ninety days of receipt of each completed application submitted to it, review the application and either:

(1) Make a written recommendation as to the modification or construction financing, in terms of the kind, amount and source of funding, for which the applicant county submitting the application is eligible; or

(2) If the authority determines that (A) the proposed modification or construction of a courthouse facility is not eligible for funding assistance from the authority, or (B) the
21 proposed modification or construction of a courthouse facility
22 is not otherwise an appropriate or prudent investment of state
23 funds, the authority shall state the reasoning for its findings in
24 a written rejection of the county applicant’s application.

§29-26-5. Powers of the authority.

1 In addition to the powers set forth elsewhere in this article,
2 the authority may exercise the following powers it considers the
3 exercise of these powers necessary and appropriate to carry out
4 and effectuate its responsibilities as defined by this article. The
5 authority may:
6
7 (a) Employ an executive director and an executive assistant
8 as may be necessary in the judgment of the authority and fix
9 their compensation;

10 (b) Acquire, hold and dispose of real and personal property
11 for its corporate purposes;

12 (c) Make bylaws for the management and rule of its affairs;

13 (d) Contract with and employ attorneys, accountants,
14 construction and financial experts, architects, engineers,
15 managers and such other employees and agents that are
16 necessary in the judgment of the authority and fix their compen-
17 sation;

18 (e) Make contracts and execute all instruments necessary or
19 convenient to exercise the powers granted to it by this article;

20 (f) Renegotiate all contracts entered into by it whenever,
21 due to a change in situation, it appears to the authority that its
22 interests will be best served;

23 (g) Accept and expend any gift, grant, contribution, bequest
24 or endowment of money to, or for the benefit of, the authority,
25 from the state of West Virginia or any other source;
(h) Identify any alternative sources of funding, whether privately or publicly administered, and assist county applicants in the securing of alternative sources of funding; and

(i) Do all things necessary or convenient to carry out the powers given in this article.

§29-26-6. The courthouse facilities improvement fund.

(a) There is hereby created in the state treasury a special revenue account to be known as the “West Virginia courthouse facilities improvement fund”. The West Virginia courthouse facilities improvement fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) The authority shall undertake a study on the condition and state of need of every courthouse facility throughout the state of West Virginia, and shall determine the estimated cost of the improvements which are necessary to bring each facility into conformity with requirements outlined in this article. The authority shall submit to the Legislature, on or before the first day of January, two thousand two, a report which shall contain the estimate of the cost, a plan for the financing of the cost, and an estimated prioritized schedule for the implementation and financing of the improvements to be made pursuant to the provisions of this article.

(c) The moneys of the West Virginia courthouse facilities improvement fund shall be disbursed by the authority for the funding of approved modifications or construction of court facilities and to pay expenses of the authority in administering the provisions of this article.

(d) Any disbursements from the West Virginia courthouse facilities improvement fund allocated for approved modifications or construction of courthouse facilities may be made
contingent upon local appropriations or gifts in money or in
kind for the support of the modifications or construction.

(e) Nothing in this article may be construed to mandate
funding for the West Virginia court facilities improvement fund
or to require any appropriation by the Legislature.

CHAPTER 78

(Com. Sub. for S. B. 102 — By Senators Fanning, Minard, Deem, Redd,
McCabe, Wooton, McKenzie, Hunter and Kessler)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section ten, article one, chapter fifty-nine
of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, relating to modifying the fees charged by the clerk of the county
commission; combining fees charged for various types of documents and
services; and increasing certain fees.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter fifty-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. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

For the purpose of this section, the word “page” is defined
as being a paper writing of not more than legal size, 8 ½” x 14”.
The clerk of the county commission shall charge and collect the following fees:

(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and indexing in a proper index, where the writing is a:

  (1) Deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease ........................................... $10.00

  (2) Financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code ........................................ 10.00

  (3) Plat or map (with no deed of conveyance) .... 10.00

  (4) Service discharge record ...................... No Charge

  (5) Any document or writing other than those referenced in subdivisions (1), (2), (3) and (4) of this subsection .... 5.00

  (6) If any document or writing contains more than five pages, for each additional page ......................... 1.00

(b) For administering any oath other than oaths by officers and employees of the state, political subdivisions of the state, or a public or quasi public entity of the state or a political subdivision of the state, taken in his or her official capacity ........................................ 5.00

(c)(1) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister's return to one
of the licensees and notification to a licensee after sixty days of
the nonreceipt of the minister’s return) .................. 25.00

(2) One dollar of the marriage license fee received pursuant
to this subsection shall be paid by the county clerk into the state
treasury as a state registration fee in the same manner that
license taxes are paid into the treasury under article twelve,
chapter eleven of this code;

(3) Fifteen dollars of the marriage license fee received
pursuant to this subsection shall be paid by the county clerk into
the state treasury for the family protection shelter support act in
the same manner that license taxes are paid into the treasury
under article twelve, chapter eleven of this code.

(d) (1) For a copy of any writing or document, if it is not
otherwise provided for ........................................ 1.50

(2) If the copy of the writing or document contains more
than two pages, for each additional page ............... 1.00

(3) For annexing the seal of the commission or clerk to any
paper ......................................................... 1.00

(4) For a certified copy of a birth certificate, death certifi-
cate or marriage license ............................... 5.00

CHAPTER 79

(S. B. 516 — By Senators Burnette, Love, Mitchell and Ross)

[Passed April 11, 2001; to take effect July 1, 2001. 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, relating to adding magistrates to those serving Berkeley and Nicholas Counties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

(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 the 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.

(d) Notwithstanding the other provisions of this section, the allowable number of magistrates serving the counties of Berkeley and Nicholas on the first day of March, two thousand one, shall be increased by one in each county, effective the first day of July, two thousand one. The initial appointment to the position shall be made in accordance with the provisions of section six of this article.
AN ACT to amend and reenact sections eight and nine, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing salaries for magistrate clerks, magistrate assistants and magistrate deputy clerks.

Be it enacted by the Legislature of West Virginia:

That sections eight and nine, article one, chapter fifty 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. COURTS AND OFFICERS.

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.


§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

(a) In each county having three or more magistrates the judge of the circuit court or the chief judge of the circuit court, if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties the judge may appoint a magistrate court clerk or may by rule require the
6 duties of the magistrate court clerk to be performed by the clerk
7 of the circuit court, in which event the circuit court clerk is
8 entitled to additional compensation in the amount of two
9 thousand five hundred dollars per year. The magistrate court
10 clerk serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be paid a monthly salary
12 by the state. Magistrate court clerks serving magistrates who
13 serve less than eight thousand five hundred in population shall
14 be paid up to one thousand seven hundred forty-eight dollars
15 per month and magistrate court clerks serving magistrates who
16 serve eight thousand five hundred or more in population shall
17 be paid up to two thousand one hundred fifty-seven dollars per
18 month: Provided, That on and after the first day of January, two
19 thousand two, magistrate court clerks serving magistrates who
20 serve less than eight thousand five hundred in population shall
21 be paid up to one thousand nine hundred ninety-eight dollars
22 per month and magistrate court clerks serving magistrates who
23 serve eight thousand five hundred or more in population shall
24 be paid up to two thousand four hundred seven dollars per
25 month: Provided, however, That after the effective date of this
26 section, any general salary increase granted to all state employ-
27 ees, whose salaries are not set by statute, expressed as a
28 percentage increase or an “across-the-board” increase, may also
29 be granted to magistrate court clerks. For the purpose of
30 determining the population served by each magistrate, the
31 number of magistrates authorized for each county shall be
32 divided into the population of each county. The salary of the
33 magistrate court clerk shall be established by the judge of the
34 circuit court, or the chief judge of the circuit court if there is
35 more than one judge of the circuit court, within the limits set
36 forth in this section.

37 (c) In addition to other duties that may be imposed by the
38 provisions of this chapter or by the rules of the supreme court
39 of appeals or the judge of the circuit court or the chief judge of
the circuit court if there is more than one judge of the circuit court, it is the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for the magistrate court, to assist in the preparation of the reports required of the court and to carry out on behalf of the magistrates or chief magistrate if a chief magistrate is appointed, the administrative duties of the court.

(d) The magistrate court clerk, or if there is no magistrate court clerk in the county, the clerk of the circuit court, may issue all manner of civil process and require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


(a) In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he or she shall serve. The assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the state of West Virginia. For the purpose of this section, "immediate family" means the relationships of mother, father, sister, brother, child or spouse.

(b) A magistrate assistant shall have the duties, clerical or otherwise, assigned by the magistrate and prescribed by the rules of the supreme court of appeals or the judge of the circuit court or the chief judge of the circuit court if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and are accountable to the magistrate court clerks with respect to the following duties:

(1) The preparation of summons in civil actions;
(2) The assignment of civil actions to the various magis-
trates;

(3) The collection of all costs, fees, fines, forfeitures and
penalties which are payable to the court;

(4) The submission of moneys, along with an accounting of
the moneys, to appropriate authorities as provided by law;

(5) The daily disposition of closed files which are to be
located in the magistrate clerk’s office;

(6) All duties related to the gathering of information and
documents necessary for the preparation of administrative
reports and documents required by the rules of the supreme
court of appeals or the judge of the circuit court or the chief
judge of the circuit court if there is more than one judge of the
circuit court;

(7) All duties relating to the notification, certification and
payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magis-
trate assistant is accountable to the magistrate court clerk as
determined by the magistrate.

(c) Magistrate assistants shall be paid a monthly salary by
the state. Magistrate assistants serving magistrates who serve
less than eight thousand five hundred in population shall be
paid up to one thousand four hundred seventy-four dollars per
month and magistrate assistants serving magistrates who serve
eight thousand five hundred or more in population shall be paid
up to one thousand seven hundred thirty-two dollars per month:

Provided, That on and after the first day of January, two
thousand two, magistrate assistants serving magistrates who
serve less than eight thousand five hundred in population shall
be paid up to one thousand seven hundred twenty-four dollars
per month and magistrate assistants serving magistrates who serve eight thousand five hundred or more in population shall be paid up to one thousand nine hundred eighty-two dollars per month: Provided, however, That after the effective date of this section, any general salary increase granted to all state employees, whose salaries are not set by statute, expressed as a percentage increase or an “across-the-board” increase, may also be granted to magistrate assistants. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

CHAPTER 81

(S. B. 688 — By Senators Chafin and Kessler)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of costs to be collected in criminal proceedings in magistrate court; mandating the use of the increase; and extending the time in which incarcerated persons may pay costs and fines.

Be it enacted by the Legislature of West Virginia:

That section two, article three, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law: (1) Costs in the amount of fifty-five dollars; and (2) an amount equal to the one-day per diem provided for in subsection (h), section ten, article twenty, chapter thirty-one of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work release program shall not be held liable for the fines and court costs until ninety days after completion of the term in jail or prison. A magistrate court shall deposit five dollars from each of the criminal proceedings fees collected pursuant to this section in the court security fund created in section fourteen, article three, chapter fifty-one of this code. A magistrate court shall, on or before the tenth day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in subsection (h), section ten, article twenty, chapter thirty-one of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk or if there is no magistrate court clerk to the clerk of the circuit, together with information as may be required by the rules of the supreme court of appeals and the rules of the office of chief inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of section fifteen, article five, chapter seven of this code. Amendments made to this section during the regular session of the Legislature, two thousand one, are effective after the thirtieth day of June, two thousand one.
(b) A magistrate shall assess costs in the amount of two dollars and fifty cents for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of ten dollars shall be imposed by the magistrate court and is certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

CHAPTER 82

(S. B. 556 — By Senators Wooton, Burnette, Caldwell, Deem, Facemyer, Fanning, Hunter, Minard, Ross and Snyder)

[Passed March 27, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-d, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certification of crane operators; and clarifying the exceptions to the certification requirement.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

(a) Commencing with the first day of September, two thousand one, a person may not operate a crane with a lifting capacity of five tons or more without certification issued under this article except for those persons exempted under subsection (b) of this section.

(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
(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 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.

CHAPTER 83

(S. B. 192 — By Senators Hunter, Fanning, Minard, Mitchell, Oliverio, Redd, Facemyer, McKenzie, Kessler, Unger, Rowe, Snyder, Edgell and Sprouse)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stalking and
harassment generally; penalties; and enhanced penalties for violations of protective order.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

(a) Any person who willfully and repeatedly follows and harasses a person with whom he or she has or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, a member of that person’s immediate family, his or her current social companion, his or her professional counselor or attorney, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(b) Any person who willfully and repeatedly follows and makes a credible threat against a person with whom he or she has or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, or against a member of that person’s immediate family, his or her current social companion, his or her professional counselor or attorney with the intent to place or placing him or her in reasonable apprehension that he or she or a member of his or her immediate family will suffer death, sexual assault, kidnaping, bodily injury or battery is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
(c) Any person who repeatedly harasses or repeatedly makes credible threats against a person with whom he or she has, or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, or against a member of that person's immediate family, his or her current social companion, his or her professional counselor or attorney is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(d) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a), (b) or (c) of this section in violation of an order entered by a circuit court, magistrate court or family law master, in effect and entered pursuant to part 48-5-501, et seq., part 48-5-601, et seq. or 48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(e) A second or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of 48-27-403 of this code who has been served with a copy of said order or 48-27-501 of this code who is convicted of a violation of the provisions of this section shall be guilty of a felony and punishable by incarceration in a state correctional facility for not less than one year nor
more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(g) For the purposes of this section:

(1) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;

(2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(3) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition; and

(4) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household.

(h) Nothing in this section shall be construed to prevent lawful assembly and petition for the redress of grievances, including, but not limited to: Any labor dispute; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

(i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.
(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

CHAPTER 84

(S. B. 524 — By Senators Wooton, Burnette, Caldwell, Fanning, Hunter, Kessler, Minard, Mitchell, Oliverio, Redd, Ross, Rowe, Snyder, Deem, Facemyer and McKenzie)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
items to adults and juveniles in custody or confinement are subject to penalties of both fine and incarceration.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, 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 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or confinement in any county or regional jail, state correctional facility, juvenile facility or juvenile detention center, if any other person shall deliver anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult’s or juvenile’s escape or attempted escape therefrom, or if the other person shall forcibly rescue or attempt to rescue an adult or a juvenile therefrom, the other 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 ten years.

(b) Where any adult or juvenile is lawfully detained in custody or confinement in any county or regional jail, a state correctional facility or a juvenile facility or juvenile detention center, if any other person shall deliver any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, utensil or instrument of any kind to such adult or juvenile without the express authority and permission of the supervising officer and with knowledge that such adult or juvenile is lawfully detained, such other person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor
more than five hundred dollars and confined in the county or regional jail not less than three nor more than twelve months: Provided, That the provisions of this section do not prohibit an attorney or his or her employees from supplying any written or printed material to an adult or juvenile which pertains to that attorney’s representation of the adult or juvenile.

(c) If any person transports any alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon or any controlled substance as defined by chapter sixty-a of this code onto the grounds of any county or regional jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, such person is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars or confined in a state correctional facility not less than two years nor more than ten years, or both, or, in the discretion of the court, be confined in the county or regional jail not more than one year and fined not more than five hundred dollars.

(d) If any person delivers any alcoholic liquor, nonintoxicating beer, poison, explosive, firearm or other dangerous or deadly weapon, or any controlled substance as defined by chapter sixty-a of this code to an adult or juvenile in custody or confinement in any county or regional jail, state correctional facility, juvenile facility or juvenile detention center within this state and is unauthorized by law to do so, or is unauthorized by the persons supervising the facility, such person is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars or confined in a state correctional facility not less than one year nor more than five years, or both.
(e) Whoever purchases, accepts as a gift, or secures by barter, trade or in any other manner, any article or articles manufactured at or belonging to any county or regional jail, state correctional facility, juvenile facility or juvenile detention center from any adult or juvenile detained therein is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and confined in the county or regional jail not less than three nor more than twelve months: Provided, That the provisions of this subsection do not apply to articles specially manufactured in any facility under the authorization of the persons supervising the facility and which are offered for sale within or outside of the facility.

(f) Whoever persuades, induces or entices or attempts to persuade, induce or entice any person who is in custody or confined in any county or regional jail, state correctional facility, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the persons supervising the facility is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and confined in the county or regional jail not less than three nor more than twelve months.

CHAPTER 85

(H. B. 2275 — By Delegates Stemple, Shelton and Williams)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
hundred thirty-one, as amended, relating to obstructing law-
enforcement officer; creating felony offense of disarming or
attempting to disarm an officer; creating misdemeanor offense of
making false statement to officer; providing exceptions; providing
penalties; and defining term.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, 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 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false
statement to officer; 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 or confined in
the county or regional jail not more than one year, or both.

(b) Any person who intentionally disarms or attempts to
disarm any law-enforcement officer acting in his or her official
capacity, is guilty of a felony and, upon conviction thereof,
shall be imprisoned in the state correctional facility not less
than one nor more than five years.

(c) Any person who, with intent to impede or obstruct a
law-enforcement officer in the conduct of an investigation of a
felony offense, knowingly and wilfully makes a materially false
statement, is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than twenty-five dollars and not
more than two hundred dollars, or confined in the county or
regional jail for five days, or both: Provided, That the provi-
sions of this section shall not apply to statements made by a
spouse, parent, stepparent, grandparent, sibling, half-sibling,
child, stepchild or grandchild, whether related by blood or
marriage, of the person under investigation. Statements made
by the person under investigation may not be used as the basis
for prosecution under this subsection. For the purposes of this
subsection, "law-enforcement officer" shall not include
watchman, state police or college security personnel.

(d) 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 or
confined in the county or regional jail not more than one year,
or both.

(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, 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.

(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 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.

(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 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

CHAPTER 86

(Com. Sub. for H. B. 2376 — By Delegates Caputo, Prunty, Manchin, Stalnaker, Varner, Marshall and Shaver)

[Passed April 13, 2001; in effect ninety days 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 eleven, relating to creating the misdemeanor offense for intentionally breathing, inhaling, or drinking certain intoxicating compounds; and providing a criminal penalty.

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 eleven, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-11. Breathing, inhaling, or drinking certain intoxicating compounds; penalty.

(a) No person shall intentionally breathe, inhale, or drink any compound, liquid, or chemical containing acetone, amylacetate, benzol or benzene, butyl acetate, butyl alcohol, carbon tetrachloride, chloroform, cyclohexanone, ethanol or ethyl alcohol, ethyl acetate, hexane, isopropanol or isopropyl alcohol, isopropyl acetate, methyl “cellosolve” acetate, methyl ethyl ketone, methyl isobutyl ketone, toluol or toluene, trichlo-roethylene, tricresyl phosphate, xylol or xylene, or any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, or irrational behavior or in any manner changing, distorting, or disturbing the auditory, visual, or mental processes. For the purposes of this section, any condition so induced shall be deemed to be an intoxicated condition.

(b) This section does not apply to:

(i) Any person who commits any act described herein pursuant to the direction or prescription of a licensed physician or dentist authorized to so direct or prescribe, including the inhalation of anesthesia for medical or dental purposes; or

(2) To any alcoholic liquor or nonintoxicating beer as defined in section five, article one, chapter sixty of this code.
(c) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or be confined in a county or regional jail for not more than sixty days, or both fined and imprisoned.
condition of bail, the circuit court or magistrate shall declare the
bail forfeited.

(2) Whenever a person or entity other than the person under
bail serves as surety, forfeiture of bail shall be declared only
when the person under bail willfully and without just cause fails
to appear as and when required unless the surety, by the express
terms of the bail instrument, has agreed to be responsible to
ensure compliance with one or more other conditions of bail
and there is a willful violation of such condition.

CHAPTER 88

(Com. Sub. for H. B. 3130 — By Mr. Speaker, Mr. Kiss, and
Delegates Trump and Michael)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, chapter fifteen of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend article six, chapter sixty-two of said code
by adding thereto a new section, designated section six-a, relating
to refusing to accept custody of prisoners arrested by a member
of the state police who are in need of medical treatment by a
physician; and duty to accept prisoners who are not injured; and
penalties.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, chapter fifteen of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be
repealed; and that article six, chapter sixty-two be amended by adding
thereto a new section, designated section six-a, to read as follows:
§62-6-6a. Disposition of prisoners.

(a) It is the duty of all officers of the state, or of any county or municipality thereof, or jailers having the charge and custody of any jail or place of detention, to receive any prisoners arrested by any officer or member of any law-enforcement office acting in his or her official capacity and to detain them in custody until ordered released by a tribunal of competent jurisdiction, and any officer, jailer or person having custody of any jail or place of detention who willfully fails or refuses to receive and detain the prisoner is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county or regional jail for not more than sixty days, or both fined and imprisoned.

(b) Notwithstanding the provisions of subsection (a) of this section, no officer, jailer or other person having authority to accept prisoners in a county or regional jail is required to do so if the prisoner appears to be in need of medical attention of a degree necessitating treatment by a physician. If a prisoner is refused pursuant to the provisions of this section, he or she may not be accepted for detention until the arresting or transporting officer provides the officer, jailer or person accepting prisoners with a written clearance from a licensed physician reflecting that the prisoner has been examined and, if necessary, treated and which states that in the physician’s medical opinion the prisoner can be safely confined in the county or regional jail.
CHAPTER 89

(Com. Sub. for H. B. 2243 — By Delegates Siemple, Fletcher, Williams and Shelton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to parole; violation of parole; procedures; conditions; restrictions; updating terms; and effecting release of persons upon approval of a home plan.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.


(a) If at any time during the period of parole, there shall be reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer may arrest him or her with or without an order or warrant, or the commissioner of corrections may issue its written order or warrant for his or her arrest, which written order or warrant shall be sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The commissioner’s written order or warrant delivered to the sheriff
against the paroled prisoner shall be a command to keep custody of the parolee for the jurisdiction of the division of corrections, and during the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the division of corrections.

(b) When a parolee is under arrest for violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing, at which the parolee and his or her counsel shall be given an opportunity to attend. If at the hearing, it shall appear to the satisfaction of the board that the parolee has violated any condition of his or her release on parole, or any rules or conditions of his or her supervision, the board may revoke his or her parole and may require him or her to serve in prison the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment: Provided, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the board may, if in its judgment the best interests of justice do not require revocation, reinstate him or her on parole. The division of corrections will effect release from custody upon approval of a home plan.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the division of corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she shall be ineligible for further parole.

(d) Whenever the parole of a paroled prisoner has been revoked, the commissioner shall upon receipt of the board’s written order of revocation, convey and transport the paroled
prisoner to a state correctional institution. A paroled prisoner whose parole has been revoked shall remain in custody of the sheriff until delivery to a corrections officer sent and duly authorized by the commissioner for the removal of the paroled prisoner to a state penal institution; the cost of confining such paroled prisoner shall be paid out of the funds appropriated for the division of corrections.

(e) When a paroled prisoner is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it shall be the duty of the board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided for in this article: Provided, That the board may, if it be of opinion the best interests of justice do not require revocation, cause the paroled absconder to be reinstated to parole.

(f) A warrant filed by the commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the division of corrections and physically in the state of West Virginia.

(g) Whenever a parolee, who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the division of corrections, the commissioner may assess reasonable costs from the parolee’s inmate funds or the parolee as reimbursement to the division of corrections for the costs of returning him or her to the state of West Virginia.
AN ACT to amend and reenact section eight, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the historic preservation section; rules; permits; and establishing that county general revenue funds are not considered funds of the state.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.

§29-1-8. Historic preservation section; director.

1 (a) The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the state of West Virginia and the territory included therein 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, restoration or development of the sites, structures and objects; to direct, protect, excavate, preserve, study or develop the sites and structures; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the section; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the section; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological and prehistoric and historic features under the provisions of section eight-a of this article; and to perform any other duties as may be 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 historic preservation section who shall have: (1) A graduate degree in one of the social sciences or equivalent training and experience in the field of historic preservation, archaeology, West Virginia history or history; and (2) three years' experience in administration in the field of West Virginia history, history, historic preservation or archaeology. Notwithstanding these qualifications, the person serving as the deputy state historic preservation officer on the date of enactment of this article shall be eligible for appointment as the director of the historic preservation section. The director of the historic preservation section shall serve as the deputy state historic preservation officer.

(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 profes-
sional qualifications necessary to carry out the provisions of the
National Historic Preservation Act of 1966, as amended. At the
minimum, the following professions shall be represented within
the section staff: Historian, architectural historian, a structural
historian who specializes in historical preservation, an archaeol-
gist specializing in historic and prehistoric archaeology, and
such 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 profes-
sional policies and functions of the historic preservation
section; (2) the review of and, when required, issuance of
permits for all undertakings permitted, funded, licensed or
otherwise assisted, in whole or in part, by the state as indicated
in subsection (a) of this section, in order to carry out the duties
and responsibilities of the section: Provided, That solely for the
purposes of this section, funded, in whole or in part, by the state
shall not include funding from any county’s general revenue
fund regardless of whether or not state funds are commingled
with the county’s general revenue fund; (3) the establishment
and maintenance of a West Virginia state register of historic
places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and
procedures for nominations to the state register and protection
of nominated and listed properties; (4) the review of historic
structures in accordance with compliance alternatives and other
provisions in any state fire regulation, and shall coordinate
standards with the appropriate regulatory officials regarding
their application; (5) review of historic structures in conjunction
with existing state or local building codes and shall coordinate
standards with the appropriate regulatory officials for their
application; and (6) any other rules as may be considered
necessary to effectuate the purposes of this article.
AN ACT to repeal chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact sections twelve and eighteen-b, article five, chapter sixteen of said code; to amend and reenact section thirteen, article five-b of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact sections thirteen and eighteen, article four, chapter twenty-three of said code; to amend and reenact section twenty-seven-a, article twenty-two, chapter twenty-nine of said code; to amend and reenact section eleven, article eight, chapter thirty-eight of said code; to amend and reenact section twenty-eight-a, article three, chapter fifty-nine of said code; to amend and reenact section ten, article two-a, chapter fifty-one of said code; to amend and reenact section eight, article ten, chapter fifty-six of said code; to amend and reenact section nine, article three, chapter fifty-seven of said code; and to amend and reenact section twenty-eight-a, article one, chapter fifty-nine of said code, all relating to revising, arranging, consolidating and recodifying the laws of the state of West Virginia relating to domestic relations.

Be it enacted by the Legislature of West Virginia:
That chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article two, chapter five-f of said code be amended and reenacted; that sections twelve and eighteen-b, article five, chapter sixteen of said code be amended and reenacted; that section thirteen, article five-b of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that sections thirteen and eighteen, article four, chapter twenty-three of said code be amended and reenacted; that section twenty-seven-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that section eleven, article eight, chapter thirty-eight of said code be amended and reenacted; that section five, article one, chapter forty-two of said code be amended and reenacted; that chapter forty-eight of said code be amended and reenacted; that section one, article three, chapter forty-nine of said code be amended and reenacted; that section ten, article two-a, chapter fifty-one of said code be amended and reenacted; that section eight, article ten, chapter fifty-six of said code be amended and reenacted; that section nine, article three, chapter fifty-seven of said code be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.


17B. Motor Vehicle Driver's Licenses.

23. Workers' Compensation.

29. Miscellaneous Boards and Officers.

38. Liens.

42. Descent and Distribution.

48. Domestic Relations.


51. Courts and Their Officers.

56. Pleading and Practice.

57. Evidence and Witnesses.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

*§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

1. (1) Building commission provided for in article six, chapter five of this code;
2. (2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;
3. (3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;
4. (4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;
5. (5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
6. (6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;
7. (7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

*Clerk's Note: This section was also amended by H. B. 2218 (Chapter 123), which passed subsequent to this act.
(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:
(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors' examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which shall include:

(i) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(ii) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(iii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;
(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code;

(3) Bureau of environment:

(A) Air quality board provided for in article two, chapter twenty-two-b of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;

(E) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code; and

(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(H) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;
(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau of public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;
(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The bureau for child support enforcement provided for in chapter forty-eight of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;
(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;
(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(8) Division of banking provided for in article two, chapter thirty-one-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver’s licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the
provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a
secretary pursuant to this section, that transfer shall be con-
strued to be solely for purposes of administrative support and
liaison with the office of the governor, a department secretary
or a bureau. The bureaus created by the Legislature upon the
abolishment of the department of commerce, labor and environ-
mental resources in the year one thousand nine hundred
ninety-four shall be headed by a commissioner or other
statutory officer of an agency within that bureau. Nothing in
this section shall be construed to extend the powers of depart-
ment secretaries under section two of this article to any person
other than a department secretary and nothing herein shall be
construed to limit or abridge the statutory powers and duties of
statutory commissioners or officers pursuant to this code. Upon
the abolishment of the office of secretary of the department of
commerce, labor and environmental resources, the governor
may appoint a statutory officer serving functions formerly
within that department to a position which was filled by the
secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

Article
  5B. Hospitals and Similar Institutions.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.
§16-5-18b. Limitation on use of social security numbers.

§16-5-12. Birth registration generally; acknowledgment of patern-
ity.

(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 the birth and
shall be registered by the 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 or her 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) 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 contemporaneously
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 transmitted 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 twenty-four, chapter forty-
eight 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
determination of paternity has been made by a court of compe-
tent jurisdiction pursuant to the provisions of article twenty-
four, chapter forty-eight of this code or other applicable law, in
which case the name of the father as determined by the court
shall be entered.

(i) A written, notarized acknowledgment of both the man
and the woman that the man is the father of a named child
legally establishes the man as the father of the child for all
purposes, and child support may be established pursuant to the
provisions of chapter forty-eight of this code.

(1) The written acknowledgment shall include filing
instructions, the parties' social security number and addresses
and a statement, given orally and in writing, of the alternatives
to, the legal consequences of, and the rights and obligations of
acknowledging paternity, including, but not limited to, the duty
to support a child. If either of the parents is a minor, the
statement shall include an explanation of any rights that may be
afforded due to the minority status.

(2) The failure or refusal to include all information required
by subdivision (1) of this subsection shall not affect the validity
of the written acknowledgment, in the absence of a finding by
a court of competent jurisdiction that the acknowledgment was
obtained by fraud, duress or material mistake of fact, as
provided in subdivision (4) of this subsection.

(3) The original written acknowledgment should be filed
with the state registrar of vital statistics. Upon receipt of any
acknowledgment executed pursuant to this section, the registrar
shall forward the copy of the acknowledgment to the bureau for
child support enforcement and the parents, if the address of the
parents is known to the registrar. If a birth certificate for the
child has been previously issued which is incorrect or incom-
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.

§16-5-18b. Limitation on use of social security numbers.

A social security account number obtained in accordance with the provisions of this article with respect to the filing of:
(1) A certificate of birth; (2) an application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. The social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar, county clerk or other issuing authority, if any. The social security account numbers shall be made available by the state registrar to the bureau for child support enforcement upon the request of the bureau, to be used solely in connection with the enforcement of child support orders.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to section two of this article and every birthing center licensed pursuant to section two, article two-e of this chapter, that provides obstetrical services in West Virginia shall participate in the hospital-based paternity program.

(b) The bureau for child support enforcement as described in article eighteen, chapter forty-eight of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of subsection (i), section twelve, article five, chapter sixteen of this code; and

(3) The telephone contact number for the bureau for child support enforcement that a parent may call for further information regarding the establishment of paternity.
Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself out to be the natural father of the child:

1. Information regarding the establishment of paternity;
2. An acknowledgment of paternity fulfilling the requirements of subsection (i), section twelve, article five, chapter sixteen of this code; and
3. The telephone contact number for the bureau for child support enforcement that a parent may call for further information regarding the establishment of paternity.

The bureau for child support enforcement shall notify the state department of health of any failure of any hospital or birthing center to conform with the requirements of this section.

Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

(a) The division upon issuing a driver’s license shall have authority whenever good cause appears to impose restrictions suitable to the licensee’s driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine
to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The division shall issue a restricted license to a person who has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court orders restrictions of the person’s license as provided in article fifteen, chapter forty-eight of this code.

(c) The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(d) The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to such person.

CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.


§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.


Notwithstanding anything herein contained, no sum will be paid to a widow or widower who abandoned the employee before the injury causing death. However, the provisions of this section may not be construed to preclude a widow or widower from receiving compensation in accordance with section ten of this article if the widow or widower was abandoned within a
§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except as provided by this section, compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section sixteen, article five of this chapter, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapter forty-eight of this code. Payments may be made in such periodic installments as determined by the division in each case, but in no event less frequently than semimonthly for any temporary award and monthly for any permanent award. Payments for permanent disability shall be paid on or before the third day of the month in which they are due. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the bureau for child support enforcement.

(a) Upon notification by the bureau for child support enforcement that a person who is entitled to all or part of a lottery prize is delinquent in the payment of child support or spousal support, the director shall forward to the bureau for child support enforcement the prize or portion to be distributed
directly from the state lottery office that is available to be applied to the delinquent support payment.

(b) The director shall enter into a written agreement with the bureau for child support enforcement for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section. The director shall include in the agreement a method by which the bureau for child support enforcement will receive the names of lottery winners as expeditiously as possible.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

No exemption claimed under the preceding sections of this article, or any of them, shall affect or impair any claim for child or spousal support established or enforced under the provisions of chapter forty-eight of this code, the purchase money of the personal estate in respect to which such exemption is claimed, or any proceeding for the collection of taxes, or county or district or municipal levies. Any increase in the exemption provided by a prior enactment of other sections of this article are not applicable to liens and all other debts and liabilities contracted and incurred prior to the effective date of the prior enactment of those sections.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

(a) Children born out of wedlock shall be capable of inheriting and transmitting inheritance on the part of their mother and father.
(b) Prior to the death of the father, paternity shall be established by:

(1) An acknowledgment that he is the child’s father;

(2) An adjudication of paternity pursuant to the provisions of article twenty-four, chapter forty-eight of this code; or

(3) An order of a court of competent jurisdiction issued in another state.

(c) After the death of the father, paternity is established if, after a hearing on the merits, the court finds, by clear and convincing evidence, that the man is the father of the child. The civil action must be filed in the circuit court of the county where the administration of the decedent’s estate has been filed or could be filed:

(1) Within six months of the date of the final order of the county commission admitting the decedent’s will to probate or commencing intestate administration of the estate; or

(2) If none of the above apply, within six months from the date of decedent’s death.

(d) Any putative child who at the time of the decedent’s death is under the age of eighteen years, a convict or a mentally incapacitated person may file such civil action within six months after he or she becomes of age or the disability ceases.

(e) The provisions of this section do not apply where the putative child has been lawfully adopted by another man and stands to inherit property or assets through his or her adopted father.

(f) The provisions of this section do not apply where the father or putative father has expressly disinherited the child in a provision of his will.
CHAPTER 48. DOMESTIC RELATIONS.

Article
1. General Provisions; Definitions.
3. Annulment or Affirmation of Marriage.
4. Separate Maintenance.
5. Divorce.
6. Property Settlement or Separation Agreements.
7. Equitable Distribution of Property.
8. Spousal Support.
12. Medical Support.
14. Remedies for the Enforcement or Support Obligations.
15. Enforcement of Support Order through Action Against License.
21. [Reserved.]
22. Adoption.
23. Voluntary Adoption Registry.
25. Change of Name.
28. [Reserved.]

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-101. Short title; intent of recodification.
§48-1-102. Legislative intent; continuation of existing statutory provisions.
§48-1-103. Operative date of enactment; effect on existing law.
§48-1-104. West Virginia code replacement.
§48-1-201. Applicability of definitions.
§48-1-203. Antenuptial or prenuptial agreement defined.
§48-1-204. Arrearages or past due support defined.
§48-1-205. Attributed income defined.
§48-1-206. Automatic data processing and retrieval system defined.
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§48-1-208. Bureau for child support enforcement defined.
§48-1-209. Bureau for child support enforcement attorney defined.
§48-1-210. Caretaker and caretaking functions defined.
§48-1-211. Chief judge defined.
§48-1-212. Clergy defined.
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§48-1-214. Commissioner defined.
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§48-1-216. Court defined.
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§48-1-218. Custodial parent defined.
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§48-1-222. Domestic relations action defined.
§48-1-223. Earnings defined.
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§48-1-226. Family law master defined.
§48-1-227. Final divorce or final annulment order defined.
§48-1-228. Gross income defined.
§48-1-229. Guardian of the property of a child defined.
§48-1-230. Income defined.
§48-1-231. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act defined.
§48-1-232. Legal parent defined.
§48-1-233. Marital property defined.
§48-1-234. Obligee defined.
§48-1-235. Obligor defined.
§48-1-236. Secretary defined.
§48-1-237. Separate property defined.
§48-1-238. Separation defined.
§48-1-239. Shared physical custody defined.
§48-1-240. Source of income defined.
§48-1-241. Split physical custody defined.
§48-1-242. Spousal support defined.
§48-1-243. Spousal support in gross defined.
§48-1-244. Support defined.
§48-1-245. Support order defined.
§48-1-246. Unreimbursed health care expenses defined.
§48-1-247. Work-related child care costs defined.
§48-1-301. Communications between clergy and party.
§48-1-302. Calculation of interest.
§48-1-303. Confidentiality of domestic relations court files.
§48-1-305. Suit money, counsel fees and costs.
§48-1-306. Proceeding for release of support lien.

PART 1. GENERAL PROVISIONS.

§48-1-101. Short title; intent of recodification.

(a) This chapter sets forth the "West Virginia Domestic Relations Act."

(b) The recodification of this chapter during the regular session of the Legislature in the year 2001 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws of the state of West Virginia relating to domestic relations at the time of that enactment.

§48-1-102. Legislative intent; continuation of existing statutory provisions.

In recodifying the domestic relations law of this state during the regular session of the Legislature in the year 2001 through the passage of House Bill 2199 it is intended by the Legislature that each specific reenactment of a substantively similar prior statutory provision will be construed as continuing the intended meaning of the corresponding prior statutory provision and any existing judicial interpretation of the prior statutory provision. It is not the intent of the Legislature, by recodifying the domestic relations law of this state during the regular session of the Legislature in the year 2001 through the passage of House Bill 2199 to alter the substantive law of this state as it relates to domestic relations.
§48-1-103. Operative date of enactment; effect on existing law.

1 The amendment and reenactment of chapter forty-eight of
2 this code and the repeal of chapters forty-eight-a, forty-eight-b
3 and forty-eight-c of this code pursuant to the provisions of
4 Enrolled Committee Substitute for House Bill No. 2199, as
5 enacted by the Legislature during the regular session, 2001, are
6 operative on the first day of September, two thousand one. The
7 prior enactments of chapters forty-eight, forty-eight-a, forty-
8 eight-b and forty-eight-c of this code, whether amended and
9 reenacted or repealed by the passage of Enrolled Committee
10 Substitute for House Bill No. 2199 have full force and effect
11 until the provisions of Enrolled Committee Substitute for House
12 Bill No. 2199 are operative on the first day of September, two
13 thousand one, unless after the effective date of Enrolled
14 Committee Substitute for House Bill No. 2199 and prior to the
15 operative date of the first day of September, two thousand one,
16 the provisions of Enrolled Committee Substitute for House Bill
17 No. 2199 are otherwise repealed or amended and reenacted.

§48-1-104. West Virginia code replacement.

1 The department of health and human resources is not
2 required to change any form or letter that contains a citation to
3 this code that is changed or otherwise affected by the
4 recodification of this chapter during the regular session of the
5 Legislature in the year 2001 through the passage of Committee
6 Substitute for House Bill 2199, unless specifically required by
7 a provision of this code.

PART 2. DEFINITIONS.

§48-1-201. Applicability of definitions.

1 For the purposes of this chapter the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in

(a) "Adjusted gross income" means gross income less the payment of previously ordered child support, spousal support or separate maintenance.

(b) A further deduction from gross income for additional dependents may be allowed by the court or master if the parent has legal dependents other than those for whom support is being determined. An adjustment may be used in the establishment of a child support order or in a review of a child support order. However, in cases where a modification is sought, the adjustment should not be used to the extent that it results in a support amount lower than the previously existing order for the children who are the subject of the modification. The court or master may elect to use the following adjustment because it allots equitable shares of support to all of the support obligor's legal dependents. Using the income of the support obligor only, determine the basic child support obligation (from the table of basic child support obligations in section 13-301 of this chapter) for the number of additional legal dependents living with the support obligor. Multiply this figure by 0.75 and subtract this amount from the support obligor's gross income.

(c) As used in this section, the term "legal dependents" means:

(1) Minor natural or adopted children who live with the parent; and

(2) Natural or adopted adult children who are totally incapacitated because of physical or emotional disabilities and for whom the parent owes a duty of support.
§48-1-203. Antenuptial or prenuptial agreement defined.

“Antenuptial agreement” or “prenuptial agreement” means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, by which the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions that define the respective property rights of the parties during the marriage, or upon the death of either or both of the parties. The agreement may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.

§48-1-204. Arrearages or past due support defined.

“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 23 of rules of practice and procedure for family law and as provided in section 1-302, a child support order may not be retroactively modified so as to cancel or alter accrued installments of support.

§48-1-205. Attributed income defined.

(a) “Attributed income” means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working
below full earning capacity, or has nonperforming or un-
der-performing assets. Income may be attributed to a parent if
the court or master evaluates the parent’s earning capacity in
the local economy (giving consideration to relevant evidence
that pertains to the parent’s work history, qualifications,
education and physical or mental condition) and determines that
the parent is unemployed, is not working full time, or is
working below full earning capacity. Income may also be
attributed to a parent if the court or master finds that the obligor
has nonperforming or under-performing assets.

(b) If an obligor: (1) Voluntarily leaves employment or
voluntarily alters his or her pattern of employment so as to be
unemployed, underemployed or employed below full earning
capacity; (2) is able to work and is available for full-time work
for which he or she is fitted by prior training or experience; and
(3) is not seeking employment in the manner that a reasonably
prudent person in his or her circumstances would do, then an
alternative method for the court or master to determine gross
income is to attribute to the person an earning capacity based on
his or her previous income. If the obligor’s work history,
qualifications, education or physical or mental condition cannot
be determined, or if there is an inadequate record of the
obligor’s previous income, the court or master may, as a
minimum, base attributed income on full-time employment (at
forty hours per week) at the federal minimum wage in effect at
the time the support obligation is established.

(c) Income shall not be attributed to an obligor who is
unemployed or underemployed or is otherwise working below
full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to
whom the parties owe a joint legal responsibility for support,
and such children are of preschool age or are handicapped or
otherwise in a situation requiring particular care by the parent;
37 (2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: Provided, That if the parent is involved in an educational program, the court or master shall ascertain that the person is making substantial progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning an income in an amount less than previously earned; or

(4) The court or master makes a written finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case, the court or master may decrease the amount of attributed income to an extent required to remove such inequity.

(d) The court or master may attribute income to a parent's nonperforming or under-performing assets, other than the parent's primary residence. Assets may be considered to be nonperforming or under-performing to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate, or such other rate that the court or master determines is reasonable.

§48-1-206. Automatic data processing and retrieval system defined.

"Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

(1) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:
(A) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(D) Delinquency and enforcement activities;

(2) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(3) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(4) To provide access to the records of the department of health and human resources in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(5) To provide for security against unauthorized access to, or use of, the data in such system;
(6) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and

(7) To provide management information on all cases from initial referral or application through collection and enforcement.

§48-1-207. Basic child support obligation defined.

"Basic child support obligation" means the base amount of child support due by both parents as determined by the table of basic child support obligations set forth in section 13-301 of this chapter, based upon the combined adjusted gross income of the parents and the number of children to whom support is due.

§48-1-208. Bureau for child support enforcement defined.

"Bureau for child support enforcement" means the agency created under the provisions of article eighteen of this chapter, or any public or private entity or agency contracting to provide a service. The "bureau for child support enforcement" is that agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the secretary of the federal department of health and human services. A reference in this chapter and elsewhere in this code to the "child advocate office" or the child support enforcement division shall be interpreted to refer to the bureau for child support enforcement.

§48-1-209. Bureau for child support enforcement attorney defined.
"Bureau for child support enforcement attorney" means those persons or agencies or entities providing services under the direction of or pursuant to a contract with the bureau for child support enforcement as provided in article eighteen of this chapter.

§48-1-210. Caretaker and caretaking functions defined.

(a) "Caretaker" means a person who performs one or more caretaking functions for a child. The term "caretaking functions" means activities that involve interaction with a child and the care of a child. Caretaking functions also include the supervision and direction of interaction and care provided by other persons.

(b) Caretaking functions include the following:

(1) Performing functions that meet the daily physical needs of the child. These functions include, but are not limited to, the following:

(A) Feeding;
(B) Dressing;
(C) Bedtime and wake-up routines;
(D) Caring for the child when sick or hurt;
(E) Bathing and grooming;
(F) Recreation and play;
(G) Physical safety; and
(H) Transportation.
(2) Direction of the child's various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence and maturation;

(3) Discipline, instruction in manners, assignment and supervision of chores and other tasks that attend to the child's needs for behavioral control and self-restraint;

(4) Arrangements for the child's education, including remedial or special services appropriate to the child's needs and interests, communication with teachers and counselors and supervision of homework;

(5) The development and maintenance of appropriate interpersonal relationships with peers, siblings and adults;

(6) Arrangements for health care, which includes making medical appointments, communicating with health care providers and providing medical follow-up and home health care;

(7) Moral guidance; and

(8) Arrangement of alternative care by a family member, baby-sitter or other child care provider or facility, including investigation of alternatives, communication with providers and supervision.

§48-1-211. Chief judge defined.

"Chief judge" means the circuit judge of the circuit court in a judicial circuit that has only one circuit judge, or the chief judge of the circuit court in a judicial circuit that has two or more circuit judges.

§48-1-212. Clergy defined.
“Clergy” includes a minister, priest, rabbi or other clergy who has qualified as such before the county commission or the clerk of the county commission as provided for in section 2-402 of this chapter.

§48-1-213. Combined adjusted gross income defined.

“Combined adjusted gross income” means the combined monthly adjusted gross incomes of both parents.

§48-1-214. Commissioner defined.

“Commissioner” means any person appointed pursuant to section 18-102, who directs all child support establishment and enforcement services for the bureau for child support enforcement.

§48-1-215. Contingent fee agreement defined.

(a) “Contingent fee agreement” means a contract under which an attorney may be compensated for work in progress, dependent on the occurrence of some future event which is not certain and absolute. As such, a contingent fee agreement is not an asset, but is potential income or income capacity. This potential income may have current value, and a portion of that current value, if any, may be considered to be a marital asset. In the event a party seeks to quantify the current value of a particular contingent fee agreement for the purpose of establishing the value of the agreement as marital property, the court must find that the party has proved such value by a preponderance of the evidence. Factors to be considered by the court include, but are not limited to, the following:

(1) The nature of the particular case or claim which underlies the agreement;
(2) The jurisdiction or venue of any projected trial or proceeding;

(3) Any historical data relevant to verdicts or settlements within the jurisdiction where the case or claim is pending or may be brought;

(4) The terms and particulars of the agreement;

(5) The status of the case or claim at valuation date;

(6) The amount of time spent working on the case or claim prior to the valuation date, and an analysis of the nature of how that time was spent, including, but not limited to, such activities such as investigation, research, discovery, trial or appellate practice;

(7) The extent of the person’s active role in the work in process, whether as an actual participant or as an indirect participant such as a partner, local counsel or other ancillary role;

(8) The age of the case or claim;

(9) The expenses accrued or projected to bring the case or claim to resolution, including any office overhead attributable to case or claim; and

(10) The probable tax consequences attendant to a successful resolution of the case or claim.

(b) The provisions of this section as enacted during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.
§48-1-216. Court defined.

“Court” means a circuit court of this state, unless the context in which such term is used clearly indicates that reference to some other court is intended.

§48-1-217. Court of competent jurisdiction defined.

“Court of competent jurisdiction” means a circuit court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

§48-1-218. Custodial parent defined.

“Custodial parent” or “custodial parent of a child” means a parent who has been granted custody of a child by a court of competent jurisdiction. “Noncustodial parent” means a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child.

§48-1-219. Custodial responsibility defined.

“Custodial responsibility” refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.

§48-1-220. Decision-making responsibility defined.
“Decision-making responsibility” refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health care.

§48-1-221. Divorce defined.

“Divorce” means the judicial termination of a marriage contract. The termination of a marriage contract must be based on misconduct or other statutory cause arising after the marriage. A divorce is established by the order of a circuit court that changes the status of a husband and wife from a state of marriage to that of single persons.

*§48-1-222. Domestic relations action defined.

“Domestic relations action” means an action:

1 (1) To obtain a divorce;

2 (2) To have a marriage annulled;

3 (3) To be granted separate maintenance;

4 (4) To establish paternity;

5 (5) To establish and enforce child support, including actions brought under the provisions of the uniform interstate family support act; and

6 (6) To allocate custodial responsibility and determine decision-making responsibility, or to otherwise determine child custody, as in an action petitioning for a writ of habeas corpus wherein the issue is child custody.

§48-1-223. Earnings defined.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
“Earnings” means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. “Disposable earnings” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

§48-1-224. Employer defined.

“Employer” means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays an individual for his services.

§48-1-225. Extraordinary medical expenses defined.

“Extraordinary medical expenses” means uninsured medical expenses in excess of two hundred fifty dollars per year per child which are recurring and can reasonably be predicted by the court or master at the time of establishment or modification of a child support order. Such expenses shall include, but not be limited to, insurance copayments and deductibles, reasonable costs for necessary orthodontia, dental treatment, asthma treatments, physical therapy, vision therapy and eye care, and any uninsured chronic health problem.

§48-1-226. Family law master defined.

“Family law master” means a commissioner of the circuit court appointed or elected and authorized to hear certain domestic relations actions under section 51-2A-10 of this code.

§48-1-227. Final divorce or final annulment order defined.
“Final divorce order” or “final annulment order” means an order that grants or denies the judicial termination of a marriage contract.

§48-1-228. Gross income defined.

(a) “Gross income” means all earned and unearned income. The word “income” means gross income unless the word is otherwise qualified or unless a different meaning clearly appears from the context. When determining whether an income source should be included in the child support calculation, the court shall consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) “Gross income” includes, but is not limited to, the following:

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;

(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers’ compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

(4) In kind payments such as business expense accounts, business credit accounts and tangible property such as automobiles and meals, to the extent that they provide the parent with property or services he or she would otherwise have to provide: Provided, That reimbursement of actual expenses incurred and documented shall not be included as gross income;
(5) Attributed income of the parent, calculated in accordance with the provisions of section 1-205;

(6) An amount equal to fifty percent of the average compensation paid for personal services as overtime compensation during the preceding thirty-six months: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to separation or the birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws, and minus FICA and medicare contributions made in excess of the amount that would be paid on an equal amount of income if the parent was not self-employed: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from such employment during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such income, whichever period is shorter;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such compensation, whichever period is shorter; and

(9) Spousal support and separate maintenance receipts.
(c) Depending on the circumstances of the particular case, the court may also include severance pay, capital gains and net gambling, gifts or prizes as gross income.

(d) "Gross income" does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as temporary assistance for needy families, supplemental security income and food stamps; and

(4) A child's income unless the court determines that the child's income substantially reduces the family's living expenses.

§48-1-229. Guardian of the property of a child defined.

"Guardian of the property of a child" means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

§48-1-230. Income defined.

"Income" includes, but is not limited to, the following:

(1) Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers;

(2) Any payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, workers'
compensation benefits, state lottery winnings and prizes, and overtime pay;

(3) Any amount of money which is owing to an individual as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state, or any other legal entity which is indebted to the obligor.

§48-1-231. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act defined.

(a) “Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act” means:

(1) An individual who has applied for or is receiving services from the bureau for child support enforcement and who is the parent of a child, or the caretaker of a child, or the guardian of the property of a child when:

(A) The child has a parent and child relationship with an obligor who is not a custodial parent, a caretaker or a guardian; and

(B) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(2) An individual who has applied for or is receiving services from the bureau for child support enforcement and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is
dominated spousal support or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past; or

(3) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.

(b) The filing of an action wherein the establishment or enforcement of child support is an issue constitutes an application to receive services from the bureau for child support enforcement, if the individual filing the action is otherwise eligible for such services: Provided, That any such individual has the option to decline the receipt of such services.

§48-1-232. Legal parent defined.

"Legal parent" means an individual defined as a parent, by law, on the basis of biological relationship, presumed biological relationship, legal adoption or other recognized grounds.

§48-1-233. Marital property defined.

"Marital property" means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of co-ownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this
state, except that marital property does not include separate property as defined in section 1-238; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from: (A) an expenditure of funds which are marital property, including an expenditure of such funds which reduces indebtedness against separate property, extinguishes liens, or otherwise increases the net value of separate property; or (B) work performed by either or both of the parties during the marriage.

The definition of "marital property" contained in this section has no application outside of the provisions of this article, and the common law as to the ownership of the respective property and earnings of a husband and wife, as altered by the provisions of article 29 of this chapter and other provisions of this code, are not abrogated by implication or otherwise, except as expressly provided for by the provisions of this article as such provisions are applied in actions brought under this article or for the enforcement of rights under this article.

§48-1-234. Obligee defined.

"Obligee" means:

(1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(3) An individual seeking a judgment determining parentage of the individual’s child.
§48-1-235. Obligor defined.

1 “Obligor” means an individual or the estate of a decedent:
2 (1) Who owes or is alleged to owe a duty of support;
3 (2) Who is alleged, but has not been adjudicated, to be a parent of a child; or
4 (3) Who is liable under a support order.

§48-1-236. Secretary defined.

1 “Secretary” means the secretary of the department of health and human resources.

§48-1-237. Separate property defined.

1 “Separate property” means:
2 (1) Property acquired by a person before marriage;
3 (2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage;
4 (3) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage;
5 (4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution;
6 (5) Property acquired by a party during a marriage but after the separation of the parties and before ordering an annulment, divorce or separate maintenance; or
(6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this section which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

§48-1-238. Separation defined.

“Separation” or “separation of the parties” means the uninterrupted separation of a husband and wife for some continuous period of time during which they do not cohabit or otherwise live together as husband and wife. When a separation is required as a predicate for filing an action under this article, the separation must continue through the date of filing.

§48-1-239. Shared physical custody defined.

“Shared physical custody” means an arrangement under which each parent keeps a child or children overnight for more than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

§48-1-240. Source of income defined.

“Source of income” means an employer or successor employer or any other person who owes or will owe income to an obligor.


“Split physical custody” means a situation where there is more than one child and where each parent has physical custody of at least one child.

§48-1-242. Spousal support defined.

“Spousal support” means an allowance that a person may be ordered to pay for the support and maintenance of a spouse

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
or a former spouse, while they are living separate and apart or after an order for divorce, annulment or separate maintenance.

§48-1-243. Spousal support in gross defined.

"Spousal support in gross" means spousal support payable either in a lump sum, or in periodic payments of a definite amount over a specific period of time. A spousal support award is "spousal support in gross" only if the award grants spousal support in such terms that a determination can be made of the total amount to be paid as well as the time such payments will cease.

§48-1-244. Support defined.

"Support" means the payment of money, including interest:

(1) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple 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;

(2) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or

(3) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.
§48-1-245. Support order defined.

(a) For cases being enforced pursuant to Title IV-D of the Social Security Act, "support order" means a judgment, decree or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearage or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees and other relief.

(b) For all other cases, "support order" means an order as defined in subsection (a) of this section and, in addition, an order for the support and maintenance of a spouse or former spouse.

§48-1-246. Unreimbursed health care expenses defined.

"Unreimbursed health care expenses" means the child's portion of health insurance premiums and extraordinary medical expenses.

§48-1-247. Work-related child care costs defined.

"Work-related child care costs" shall mean the cost of child care the parent incurs due to employment or the search for employment.

PART 3. MISCELLANEOUS PROVISIONS RELATING TO DOMESTIC RELATIONS.

§48-1-301. Communications between clergy and party.

(a) A party to a domestic relations action cannot compel a member of the clergy to testify regarding any communications or statements made to the member of the clergy in his or her
capacity as spiritual counselor or spiritual adviser by a party to
the action, if the following conditions exist:

(1) Both the clergy and the party making such communica-
tions or statements claim that the communications or statements
were made to the clergy in his capacity as a clergy and spiritual
counselor or spiritual adviser to such party;

(2) No person, other than a member of the clergy, a party
and the spouse of the party, was present when such communica-
tions or statements were made; and

(3) The party making such communications or statements
does not either consent to their disclosure or otherwise waive
the privilege granted by this section.

(b) The privilege granted by this section shall be in addition
to and not in derogation of any other privileges recognized by
law.

*§48-1-302. Calculation of interest.*

(a) If an obligation to pay interest arises under this chapter,
the rate of interest is that specified in section 56-6-31 of this
code. Interest accrues only upon the outstanding principal of
such obligation. On and after the ninth day of June, one
thousand nine hundred ninety-five, this section will be con-
strued 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.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
(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 eleven 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 the provisions of this subsection may only be filed after the first day of January, two thousand one and before the thirty-first day of December, two thousand one.

§48-1-303. Confidentiality of domestic relations court files.

(a) All orders in domestic relations actions entered in the civil order books by circuit clerks are public records.

(b) Upon the filing of a domestic relations action, all pleadings, exhibits or other documents, other than orders, that are 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.
(c) 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 can only be opened by order of a circuit judge or family law master.

(d) The parties, their designees, their attorneys, a duly appointed guardian ad litem or any other person who has standing to seek modification or enforcement of a support order, has the right to examine and copy any document in a confidential court file that 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 who is not a party to the action to examine and copy any documents that are necessary to further the interests of justice.

(e) 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 shall first sign the clerk's written log, except for 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 every examination of confidential documents. The log must be retained by the clerk and must be available upon request for inspection by the court or the family law master.


(a) Upon a verified petition for contempt, notice of hearing and hearing, if the petition alleges criminal contempt or the court informs the parties that the matter will be treated and tried as a criminal contempt, the matter shall be tried before a jury, unless the party charged with contempt shall knowingly and

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
intelligently waive the right to a jury trial with the consent of the court and the other party. If the jury, or the court sitting without a jury, shall find the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of this article, as charged in the petition, the court may find the person to be in criminal contempt and may commit such person to the county jail for a determinate period not to exceed six months.

(b) If trial is had under the provisions of subsection (a) of this section and the court elects to treat a finding of criminal contempt as a civil contempt, or if the petition alleges civil contempt and the matter is not tried before a jury and the court finds the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of this article, and if the court further finds the person has the ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt. If the contemnor fails or refuses to purge himself of contempt, the court may confine the contemnor to the county jail for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself, whichever shall first occur.

(c) In the case of a charge of contempt based upon the failure of the defendant to pay alimony, child support or separate maintenance, if the court or jury finds that the defendant did not pay because he was financially unable to pay, the defendant may not be imprisoned on charges of contempt of court.

(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this article, the court shall enter judgment for such arrearage
and award interest on such arrearage from the due date of each
unpaid installment. Following any hearing wherein the court
finds that a party is in arrears in the payment of alimony, child
support or separate maintenance, the court may, if sufficient
assets exist, require security to ensure the timely payment of
future installments.

(e) At any time during a contempt proceeding, the court
may enter an order to attach forthwith the body of, and take into
custody, any person who refuses or fails to respond to the
lawful process of the court or to comply with an order of the
court. Such order of attachment shall require the person to be
brought forthwith before the court or the judge thereof in any
county in which the court may then be sitting.

§48-1-305. Suit money, counsel fees and costs.

(a) Costs may be awarded to either party as justice requires,
and in all cases the court, in its discretion, may require payment
of costs at any time, and may suspend or withhold any order
until the costs are paid.

(b) The court may compel either party to pay attorney's
fees and court costs reasonably necessary to enable the other
party to prosecute or defend the action in the trial court. An
order for temporary relief awarding attorney fees and court
costs may be modified at any time during the pendency of the
action, as the exigencies of the case or equity and justice may
require, including, but not limited to, a modification which
would require full or partial repayment of fees and costs by a
party to the action to whom or on whose behalf payment of
such fees and costs was previously ordered. If an appeal is
taken or an intention to appeal is stated, the court may further
order either party to pay attorney fees and costs on appeal.
(c) When it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

§48-1-306. Proceeding for release of support lien.

If any person deem that his or her interest, or that of any person for whom he or she may act in a fiduciary or representative capacity, will be promoted by a release, in full or in part, of a lien created upon his or her real or personal property for the support or maintenance of another person or persons, or for spousal or child support, he or she may apply by petition, in a summary way, to the court that entered the order or decree creating such lien for relief from said order. The petition shall be verified and shall describe said lien, the circumstances of the petitioner or the person for whom he is acting, the name or names of the person or persons holding such lien, and the circumstances calculated to show the propriety of the release requested. All persons interested shall be made defendants and shall be given ten days' notice before hearing upon the petition. If authorized by the court, the release may be so conditioned as to promote substantial justice, but the release may only be prospective in effect, and may not operate to deprive the person secured by the lien of the right to receive spousal or child support payments accrued to the date of the hearing.

ARTICLE 2. MARRIAGE.


§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.
§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

§48-2-104. Contents of the application for a marriage license.

§48-2-105. Execution of the application for a marriage license.


§48-2-107. Recording an application for a marriage license.

§48-2-201. Form of marriage license.

§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

§48-2-203. Register of marriages.

§48-2-204. Record of marriage celebrated outside of state.

§48-2-301. Age of consent for marriage; exception.

§48-2-302. Prohibition against marriage of persons related within certain degrees.

§48-2-303. Prohibition against marriage not to include persons related by adoption.

§48-2-401. Persons authorized to perform marriages.

§48-2-402. Qualifications of religious representative for celebrating marriages.

§48-2-403. Ritual for ceremony of marriage by religious representative.

§48-2-404. Ritual for ceremony of marriage by a judge.

§48-2-405. Record of marriage to be kept by person officiating.

§48-2-501. Unlawful acts by clerk of the county commission; penalties.

§48-2-502. Issuing marriage license contrary to law; penalty.

§48-2-503. Consanguineous marriage; penalty.

§48-2-504. Failure to endorse and return license; penalties.

§48-2-505. Unlawful solicitation of a celebration of marriage.

§48-2-601. Belief of parties in lawful marriage validates certain defects.

§48-2-602. Marriage out of state to evade law.

§48-2-603. Certain acts, records, and proceedings not to be given effect in this state.

§48-2-604. Additional fee to be collected for each marriage license issued.

PART 1. APPLICATION FOR MARRIAGE LICENSE.


1 Every marriage in this state must be solemnized under a marriage license issued by a clerk of the county commission in accordance with the provisions of this article. If a ceremony of marriage is performed without a license, the attempted marriage is void, and the parties do not attain the legal status of husband and wife.
§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

(a) If one or both of the applicants are residents of this state, they may apply for a marriage license to be issued by the clerk of the county commission of the county in which a resident applicant usually resides. If both parties are nonresidents of this state, they may apply for a license to be issued by the clerk of the county commission in any county in this state.

(b) Applications for licenses may be received and licenses may be issued by the clerk of the county commission when the office of the clerk is officially open for the conduct of business.

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

(a) Except as otherwise provided in subsection (b) of this section, if either or both of the applicants for a marriage license is under eighteen years of age, the clerk of the county commission may not issue a marriage license until two full days elapse after the day the license application is filed.

(b) In case of an emergency or extraordinary circumstances, as shown by affidavit or other proof, a circuit judge of the county in which an application for a marriage license will be filed may order the clerk of the county commission to issue a license at any time before the expiration of the waiting period prescribed in subsection (a) of this section. The clerk of the county commission shall attach a certified copy of the judge's order to the application and issue the marriage license in accordance with the order. If the judge or judges of the county in which the application will be filed are absent or incapacitated, the order may be made and directed to the clerk of the
§48-2-104. Contents of the application for a marriage license.

(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.

(b) If either of the parties is a legal alien in the United States of America and has no social security account number, a tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

(c) 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.”

§48-2-105. Execution of the application for a marriage license.

Both female and male parties to a contemplated marriage are required to sign the application for a marriage license, under oath. The application must be signed before the clerk of the county commission or another person authorized to administer oaths under the laws of this state.

(a) At the time of the execution of the application, the clerk or the person administering the oath to the applicants shall require evidence of the age of each of the applicants. Evidence of age may be as follows:

1. A certified copy of a birth certificate or a duplicate certificate produced by any means that accurately reproduces the original;

2. A voter’s registration certificate;

3. An operator’s or chauffeur’s license;

4. The affidavit of both parents or the legal guardian of the applicant; or

5. Other good and sufficient evidence.

(b) If an affidavit is relied upon as evidence of the age of an applicant, and if one parent is dead, the affidavit of the surviving parent or of the guardian of the applicant is sufficient. If both parents are dead, the affidavit of the guardian of the applicant is sufficient. If the parents of the applicant live separate and apart, the affidavit of the parent having custody of the applicant is sufficient.

§48-2-107. Recording an application for a marriage license.

The clerk of the county commission shall record the application for a marriage license in the register of marriages provided for in section 2-203. The clerk shall note the date of the filing of the application in the register. The clerk’s notation, or a certified copy thereof, is legal evidence of the facts contained in the license.
§48-2-201. Form of marriage license.

1 The marriage license shall be in form substantially as
2 follows:

3 Marriage License.

4 State of West Virginia, County of _______________,
5 to wit:

6 To any person authorized to celebrate marriages:

7 You are hereby authorized to join together in matrimony
8 ______________________ and ______________________

9 Given under my hand, as clerk of the county commission of
10 the county of _______________, this ________ day of
11 ____________, 2______.

12 _________________

13 Clerk as aforesaid.

§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

1 (a) The person solemnizing a marriage shall retain the
2 marriage license and place an endorsement on it establishing
3 the fact of the marriage and the time and place it was cele-
4 brated.

5 (b) Before the sixth day of the month after the month in
6 which the marriage was celebrated, the person who solemnized
7 the marriage shall forward the original of the marriage license
8 to the clerk who issued the license.
(c) In the event that the marriage authorized by the license is not solemnized within sixty days from the date of its issuance, then the license is null and void. If the county clerk has not received the original license within sixty days after the expiration date on the license, the clerk shall notify each of the applicants of that fact, by certified mail, return receipt requested.

§48-2-203. Register of marriages.

(a) The clerk of the county commission is required to maintain a suitable book to be used as a register of marriages. The clerk shall keep a complete record of the following information:

(1) Factual information that relates to the eligibility of a person to obtain a marriage license: Provided, That if the license is issued because the female is pregnant, the pregnancy will not be noted by the clerk in the register of marriages;

(2) Each marriage license issued by the clerk; and

(3) An endorsement by a minister, priest, rabbi, or judge certifying that the marriage was solemnized.

(b) The clerk shall index the register of marriages in the names of both parties to the marriage.

§48-2-204. Record of marriage celebrated outside of state.

If at the time of celebrating any marriage out of this state, either or both of the parties thereto is a resident of this state, a certificate or statement of that fact, verified by the affidavit of any person present at such celebration, or a transcript of the marriage record, certified by the custodian of such records, from the state where the marriage was celebrated, may be returned to the clerk of the county commission of the county in
which the husband resides, if he is a resident, or otherwise to
the clerk of the county in which the wife resides, and an
abstract thereof shall be recorded by the clerk in the register of
marriages and indexed in the name of both parties.

PART 3. CAPACITY TO MARRY.

§48-2-301. Age of consent for marriage; exception.

(a) The age of consent for marriage for both the male and
the female is eighteen years of age. A person under the age of
eighteen lacks the capacity to contract a marriage without the
consent required by this section.

(b) The clerk of the county commission may issue a
marriage license to an applicant who is under the age of
eighteen but sixteen years of age or older if the clerk obtains a
valid written consent from the applicant’s parents or legal
 guardian.

(c) Upon order of a circuit judge, the clerk of the county
commission may issue a marriage license to an applicant who
is under the age of sixteen, if the clerk obtains a valid written
consent from the applicant’s parents or legal guardian. A circuit
judge of the county in which the application for a marriage
license is filed may order the clerk of the county commission to
issue a license to an applicant under the age of sixteen if, in the
court’s discretion, the issuance of a license is in the best interest
of the applicant and if consent is given by the parents or
 guardian.

(d) A consent to marry must be duly acknowledged before
an officer authorized to acknowledge a deed. If the parents are
living together at the time the application for a marriage license
is made and the consent is given, the signatures of both parents
or the applicant’s legal guardian is required. If one parent is
dead, the signature of the surviving parent or the applicant’s
legal guardian is required. If both parents are dead, the signature of the applicant's legal guardian is required. If the parents of the applicant are living separate and apart, the signature of the parent having custody of the applicant or the applicant's legal guardian is required.

(e) If a person under the age of consent is married in violation of this section, the marriage is not void for this reason, and such marriage is valid until it is actually annulled.

(f) A marriage by an underage person without a valid consent as required by this section, though voidable at the time it is entered into, may be ratified and become completely valid and binding when the underage party reaches the age of consent. Validation of a marriage by ratification is established by some unequivocal and voluntary act, statement, or course of conduct after reaching the age of consent. Ratification includes, but is not limited to, continued cohabitation as husband and wife after the age of consent is attained.

§48-2-302. Prohibition against marriage of persons related within certain degrees.

(a) A man is prohibited from marrying his mother, grandmother, sister, daughter, granddaughter, half sister, aunt, brother's daughter, sister's daughter, first cousin or double cousin. A woman is prohibited from marrying her father, grandfather, brother, son, grandson, half brother, uncle, brother's son, sister's son, first cousin or double cousin.

(b) The prohibitions described in subsection (a) of this section are applicable to consanguineous relationships where persons are blood related by virtue of having a common ancestor.

(c) The prohibitions described in subsection (a) of this section are applicable to persons related by affinity, where the
relationship is founded on a marriage, and the prohibition
continues in force even though the marriage is terminated by
death or divorce, unless the divorce was ordered for a cause
which made the marriage, originally, unlawful or void.

§48-2-303. Prohibition against marriage not to include persons
related by adoption.

For the purpose of section 2-302, cousin or double cousin
does not include persons whose relationship is created solely by
adoption. If it necessary to open and examine the record of any
adoption proceeding in the state to ascertain that a relationship
of cousin or double cousin is created solely by adoption, then an
application may be made to the circuit court that held the
adoption proceeding, by the clerk of the county commission
seeking to issue the marriage license, or either party applying
for the license, to open the record and cause it to be examined.
Upon such application, the judge shall examine the record
confidentially and report to the clerk whether the record
discloses any consanguinity prohibited by this section and may
grant such other relief prayed for which may be proper under
article 22 of this chapter.

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.

A religious representative who has complied with the
provisions of section 2-402, or a judge of any court of record in
this state, is authorized to celebrate the rites of marriage in any
county of this state. Celebration or solemnization of a marriage
means the performance of the formal act or ceremony by which
a man and woman contract marriage and assume the status of
husband and wife.

For purposes of this chapter, the term "religious representa-
tive" means a minister, priest, or rabbi and includes, without
§48-2-402. Qualifications of religious representative for celebrating marriages.

(a) The county commission of any county in this state may make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the state, upon proof that the person:

(1) Is eighteen years of age or older;

(2) Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and

(3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

(b) The person shall give bond in the penalty of one thousand five hundred dollars, with surety approved by the commission. Any religious representative who gives proof before the county commission of his or her ordination or authorization by his or her respective church, synagogue, spiritual assembly or religious organization, is exempt from giving the bond.

§48-2-403. Ritual for ceremony of marriage by a religious representative.

A religious representative authorized to celebrate the rites of marriage shall perform the ceremony of marriage according to the rites and ceremonies of his or her religious denomination,

*Clerk's Note: This section was also amended by S. B. 59 (Chapter 94), which passed subsequent to this act.
§48-2-404. Ritual for ceremony of marriage by a judge.

The ritual for the ceremony of marriages by judges of courts of record in this state may be as follows: At the time appointed, the persons to be married, being qualified according to the law of the state of West Virginia, standing together facing the judge, the man at the judge’s left hand and the woman at the right, the judge shall say:

"We are gathered here, in the presence of these witnesses, to join together this man and this woman in matrimony. It is not to be entered into unadvisedly but discreetly, sincerely, and in dedication of life.

(Then shall the judge say to the man, using his christian name:)

"N., wilt thou have this woman to be thy wedded wife, to live together in the bonds of matrimony? Wilt thou love her, comfort her, honor and keep her in sickness and in health?

(Then the man shall answer:)

"I will.

(Then the judge shall say to the woman, using her christian name:)

"N., wilt thou have this man to be thy wedded husband, to live together in the bonds of matrimony? Wilt thou love him, comfort him, honor and keep him in sickness and health?

(The woman shall answer:)

"I will."
(Then may the judge say:)

"Who giveth this woman to be married to this man?

(The father of the woman, or whoever giveth her in marriage, shall answer:)

"I do.

(Then the judge shall ask the man to say after him:)

"I, N., take thee, N., to be my wedded wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love, and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then the judge shall ask the woman to repeat after him:)

"I, N., take thee, N., to be my wedded husband, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then, if there be a ring, the judge shall say:)

"The wedding ring is an outward and visible sign--signifying unto all, the uniting of this man and this woman in matrimony.

(The judge then shall deliver the ring to the man to put on the third finger of the woman’s left hand. The man shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed."
Then, if there be a second ring, the judge shall deliver it to the woman to put upon the third finger of the man's left hand; and the woman shall say after the judge:

"In token and pledge of the vow between us made, with this ring, I thee wed."

(Then shall the judge say:)

"Forasmuch as N. and N. have consented together in wedlock, and have witnessed the same each to the other and before these witnesses, and thereto have pledged their faith each to the other, and have declared the same by giving (and receiving) a ring, by virtue of the authority vested in me as judge of this court, I pronounce that they are husband and wife together."

§48-2-405. Record of marriage to be kept by person officiating.

A record of each marriage performed, with the names of the parties, their respective places of residence prior to marriage, and the date of marriage, shall be kept by the officiating religious representative in the permanent record of the church, synagogue, spiritual assembly or religious organization which he or she serves.

PART 5. OFFENSES AND PENALTIES.

§48-2-501. Unlawful acts by clerk of the county commission; penalties.

(a) It is unlawful for a clerk of the county commission to do any of the following acts:

(1) To make a false entry as to the date of application for a marriage license;
(2) To issue a marriage license prior to the end of the
required three-day period (unless a circuit judge dispenses with
this requirement by order pursuant to section 2-103);

(3) To issue a license on any Sunday or a legal holiday; or

(4) To receive an application for a marriage license or issue
a marriage license in any place other than the office of the clerk
of the county commission.

(b) A clerk of the county commission who violates the
provisions of subsection (a) of this section is guilty of a
misdemeanor and, upon conviction thereof, shall be punished
by a fine of not less than two hundred dollars nor more than one
thousand dollars, or by confinement in the county or regional
jail for not less than three months nor more than nine months,
or by both such fine and confinement, in the discretion of the
court.

§48-2-502. Issuing marriage license contrary to law; penalty.

A clerk of the county commission who knowingly issues
a marriage license contrary to law is guilty of a misdemeanor
and, upon conviction thereof, shall be punished by a fine not
exceeding five hundred dollars, or by confinement in the county
or regional jail for not more than one year, or by both such fine
and confinement, in the discretion of the court.

§48-2-503. Consanguineous marriage; penalty.

(a) If a person marries another who is within the degrees of
relationship described in section 2-302, and the relationship is
founded on consanguinity, the person is guilty of a misde-
meanor and, upon conviction thereof, shall be fined not more
than five hundred dollars, or be confined in the county or
regional jail for not more than six months, or both, in the
discretion of the court.
(b) If a person who is a resident of this state marries in another state or country, the person violates subsection (a) of this section if:

(1) The persons married are within the degrees of relationship described in section 2-302 and the relationship is founded on consanguinity;

(2) The person intends to evade the law of this state;

(3) The person intends to return and reside in this state; and

(4) The persons, after marrying, return to this state and cohabit as man and wife.

(c) For purposes of this section, the fact of cohabitation of the persons as man and wife is evidence of their marriage.

§48-2-504. Failure to endorse and return license; penalties.

If a person who is authorized to celebrate marriages in this state willfully fails to comply with the provisions of section 2-202, relating to the endorsement and return of a license, his or her authority must be suspended for a period of not less than six months nor more than one year. If the person gave bond under the provisions of section 2-402, the conditions of the bond are deemed to be broken and the bond must be forfeited as otherwise provided by law. The county clerk shall notify the prosecuting attorney of the county of any failure to comply with section 2-202. The prosecuting attorney shall institute proceedings before the circuit court to suspend the person’s authority to celebrate marriages. The court shall determine all questions of law and fact.

§48-2-505. Unlawful solicitation of a celebration of marriage.
It is unlawful for any religious representative in any manner to solicit the celebration of a marriage ceremony.

It is unlawful for a religious representative to give anything of value, directly or indirectly, as a reward to any person who may accompany, bring, send or direct the holders of a marriage license to the religious representative.

If a person violates the provisions of subsection (a) or (b) of this section, his or her license to celebrate marriages shall be revoked, and no such license shall thereafter be issued to the person. It is the duty of the prosecuting attorney of the county in which the violation occurs to institute proceedings in the circuit court to revoke the license. Reasonable notice of proceedings to revoke a license shall be given to the licensee. The court shall determine all questions of law and fact.

PART 6. MISCELLANEOUS PROVISIONS.

§48-2-601. Belief of parties in lawful marriage validates certain defects.

If a marriage is solemnized by a person professing to be authorized to celebrate marriages when, in fact, the person is not authorized, or if a marriage is solemnized after the license is expired, the marriage is not void and subject to a judgment of nullity based on that fact alone if:

1. The marriage is lawful in all other respects, and
2. The marriage is consummated with a full belief on the part of either or both of the persons married that they have been lawfully joined in marriage.

§48-2-602. Marriage out of state to evade law.
If a resident of this state marries in another state or country, the marriage is governed by the same law, in all respects, as if it had been solemnized in this state if, at the time of the marriage:

(1) The marriage would have been in violation of section 3-103 if performed in this state;

(2) The person intended to evade the law of this state; and

(3) The person intended to return and reside in this state.

§48-2-603. 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 the other state, territory, possession, or tribe, or a right or claim arising from such relationship, shall not be given effect by this state.

§48-2-604. Additional fee to be collected for each marriage license issued.

In addition to any fee heretofore established for the issuance of a marriage license, the county clerk shall collect a sum of fifteen dollars for each marriage license issued which additional sum shall be paid into a special revenue account of the state treasury to be dispersed to local family protection shelters as provided in article 26-101, et seq.

ARTICLE 3. ANNULMENT OR AFFIRMATION OF MARRIAGE.

§48-3-101. Right to sue to annul or affirm marriage.
§48-3-102. Venue of actions for annulment or affirmation.
§48-3-103. Voidable marriages.
§48-3-104. Affirmation or annulment of marriage.
§48-3-101. Right to sue to annul or affirm marriage.

(a) Except as otherwise provided in subsection (b) of this section, an action to annul or affirm a marriage is not maintainable unless one of the parties is a resident of this state at the time the action is commenced.

(b) Even if neither party is a resident of this state, an action to annul a marriage that was performed in this state is maintainable if the parties have not established a matrimonial domicile elsewhere.

§48-3-102. Venue of actions for annulment or affirmation.

(a) If the respondent to an action for annulling or affirming a marriage is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent to an action for annulling or affirming a marriage is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

(c) If neither party is a resident of this state, the action must be brought in the county where the marriage was performed.

§48-3-103. Voidable marriages.

(a) The following marriages are voidable and are void from the time they are so declared by a judgment order of nullity:

(1) Marriages that are prohibited by law on account of either of the parties having a wife or husband of a prior mar-
(2) Marriages that are prohibited by law on account of consanguinity or affinity between the parties;

(3) Marriages solemnized when either of the parties:

(A) Was an insane person, idiot or imbecile;

(B) Was afflicted with a venereal disease;

(C) Was incapable, because of natural or incurable impotency of the body, of entering into the marriage state;

(D) Was under the age of consent; or

(E) Had been, prior to the marriage and without the knowledge of the other party, convicted of an infamous offense;

(4) Marriages solemnized when, at the time of the marriage, the wife, without the knowledge of the husband:

(A) Was with child by some person other than the husband;

or

(B) Had been, prior to the marriage, notoriously a prostitute; or

(5) Marriages solemnized when, prior to the marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person.

§48-3-104. Affirmation or annulment of marriage.

If a marriage is supposed to be void, or voidable, or any doubt exists as to its validity, for any of the causes set forth in section 3-103, or for any other cause recognized in law, either
party may, except as provided in section 3-105, institute an
action for annulling or affirming the marriage. Upon hearing the
proofs and allegations of the parties, the court shall enter a
judgment order annulling or affirming the marriage. In every
case where the validity of a marriage is called into question, it
is presumed that the marriage is valid, unless the contrary is
clearly proved. If the court orders that the marriage is valid, the
finding of the court is conclusive upon all persons concerned.

§48-3-105. What persons may not institute annulment action.

An action for annulling a marriage may not be instituted:

(a) Where the cause is the natural or incurable impotency
of body of either of the parties to enter the marriage state, by
the party who had knowledge of such incapacity at the time of
marriage; or

(b) Where the cause is fraud, force or coercion, by the party
who was guilty of such fraud, force or coercion, nor by the
injured party if, after knowledge of the facts, he or she has by
acts or conduct confirmed such marriage; or

(c) Where the cause is affliction with a venereal disease
existing at the time of marriage, by the party who was so
afflicted if such party has subsequent to the marriage become
cured of such disease, nor by the person who was not so
afflicted if he or she after the curing of the afflicted person has
by acts or conduct confirmed the marriage; or

(d) Where the cause is the nonage of either of the parties,
by the party who was capable of consenting, nor by the party
not so capable if he or she has by acts or conduct confirmed the
marriage after arriving at the age of consent; or
(e) Where the cause is lack of consent on the part of either of the parties, by the party consenting or bringing about the marriage; or

(f) Where the cause is that either of the parties has been convicted of an infamous offense prior to marriage, by the other party if, after knowledge of such fact, he or she has cohabited with the party so convicted; or

(g) Where the cause is that the wife was at the time of marriage with child by some person other than the husband, or that prior to the marriage the wife had been notoriously a prostitute, by the husband, if after knowledge of the fact, he has cohabited with the wife; or

(h) Where the cause is that the husband was prior to the marriage notoriously a licentious person, by the wife if, after knowledge of the fact, she has cohabited with the husband.

§48-3-106. Relief ordered in annulment.

In an action for annulment, the court may order all or any portion of the final relief provided for in sections 5-603 through 5-614 and all or any portion of the temporary relief provided for in part 5, article 5 of this chapter.

§48-3-107. Modification of order granting annulment.

Upon the petition of either party, the court may revise or alter an order entered in an action for annulment or make further orders, concerning the following matters:

(1) The support and maintenance of either spouse;

(2) The interest of one spouse in the property of the other spouse;
(3) The allocation of responsibility for the children of the parties; and

(4) The support of the children of the parties.

ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

An action for separate maintenance may be brought in the circuit court of any county where an action for divorce between the parties could be brought. An action for separate maintenance may be brought whether or not a divorce is prayed for.

§48-4-102. Grounds for separate maintenance.

Separate maintenance may be ordered:

(1) If the party seeking separate maintenance has grounds for divorce; or

(2) If the party from whom separate maintenance is sought, without good and sufficient cause:

(A) Has failed to provide suitable support for the other spouse; or

(B) Has abandoned or deserted the other spouse.

§48-4-103. Award of relief in action for separate maintenance.
(a) In an action for separate maintenance, the court may order all or any portion of the temporary or final relief that the court may order in an action for divorce, other than a divorce.

(b) During the pendency of the action, the court has the same powers to make temporary orders as the court would have in actions for divorce, insofar as those powers are applicable, on behalf of either spouse.

(c) Any order entered in the case is effective during the time the court by its order directs, until further order of the court.

§48-4-104. Modification of order awarding separate maintenance.

Upon the petition of either party, the court may revise or alter an order entered in an action for separate maintenance, or may make further orders, concerning the following matters:

(1) The support and maintenance of either spouse;

(2) The interest of one spouse in the property of the other spouse;

(3) The allocation of responsibility for the children of the parties; and

(4) The support of the children of the parties.

ARTICLE 5. DIVORCE.

§48-5-101. Absolute divorce.


§48-5-103. Jurisdiction of parties; service of process.

§48-5-104. Retention of jurisdiction when divorce is denied.

§48-5-105. Residency requirements for maintaining an action for divorce.

§48-5-106. Venue of actions for divorce.

§48-5-107. Parties to a divorce action.

§48-5-201. Grounds for divorce; irreconcilable differences.
(§48-5-202. Grounds for divorce; voluntary separation.)
(§48-5-203. Grounds for divorce; cruel or unhuman treatment.)
(§48-5-204. Grounds for divorce; adultery.)
(§48-5-205. Grounds for divorce; conviction of crime.)
(§48-5-206. Grounds for divorce; permanent and incurable insanity.)
(§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.)
(§48-5-208. Grounds for divorce; desertion.)
(§48-5-209. Grounds for divorce; abuse or neglect of a child.)
(§48-5-301. When a divorce not to be granted.)
(§48-5-401. Verification of pleadings.)
(§48-5-402. Petition for divorce.)
(§48-5-403. Answer to petition.)
(§48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.)
(§48-5-405. Amendments to pleadings.)
(§48-5-501. Relief that may be included in temporary order of divorce.)
(§48-5-502. Temporary spousal support.)
(§48-5-503. Temporary parenting order; child support.)
(§48-5-504. Attorney's fees and court costs.)
(§48-5-505. Costs of health care and hospitalization.)
(§48-5-506. Use and occupancy of the marital home.)
(§48-5-507. Use and possession of motor vehicles.)
(§48-5-508. Preservation of the properties of the parties.)
(§48-5-509. Enjoining abuse.)
(§48-5-510. Consideration of financial factors in ordering temporary relief.)
(§48-5-511. Disclosure of assets.)
(§48-5-512. Ex parte orders granting temporary relief.)
(§48-5-513. Granting of ex parte relief.)
(§48-5-514. Temporary order not subject to appeal or review.)
(§48-5-601. Relief that may be included in final order of divorce.)
(§48-5-602. Court may require payment of spousal support.)
(§48-5-603. Relief regarding minor child or children.)
(§48-5-604. Use and occupancy of marital home.)
(§48-5-605. Use and possession of motor vehicles.)
(§48-5-606. Relief regarding costs of health care and hospitalization.)
(§48-5-607. Court may order transfer of accounts for recurring expenses.)
(§48-5-608. Court may enjoin abuse.)
(§48-5-609. Court may restore to either party his or her property.)
(§48-5-610. Court may order just and equitable distribution of property.)
(§48-5-611. Suit money, counsel fees and costs.)
(§48-5-612. Court may order a party to deliver separate property.)
(§48-5-613. Former name of party; restoration.)
§48-5-701. Revision of order concerning spousal support.
§48-5-702. Revision of order enjoining abuse.
§48-5-703. Revision of order allocating custodial responsibility and decision-making responsibility.
§48-5-704. Revision of order establishing child support.
§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.
§48-5-706. Revision of order concerning distribution of marital property.
§48-5-707. Reduction or termination of spousal support because of de facto marriage.

PART 1. GENERAL PROVISIONS.

§48-5-101. Absolute divorce.

1 A divorce ordered in this state is an absolute divorce.


1 The circuit courts of this state, by act of the Legislature, are vested with jurisdiction over the subject matter of divorce. A circuit court has the right and authority to adjudicate actions for divorce, and the power to carry its judgment and order into execution. Jurisdiction of the subject matter of divorce embraces the power to determine every issue or controverted question in an action for divorce, according to the court’s view of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.

1 (a) In an action for divorce, it is immaterial where the marriage was celebrated, where the parties were domiciled at the time the grounds for divorce arose, or where the marital offense was committed. If one or both of the parties is domiciled in this state at the time the action is commenced, the circuit courts of this state have jurisdiction to grant a divorce for any grounds fixed by law in this state, without any reference to the law of the place where the marriage occurred or where the marital offense was committed.
§48-5-104. Retention of jurisdiction when divorce is denied.

If a divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in this article that has been demanded in the pleadings.

§48-5-105. Residency requirements for maintaining an action for divorce.

(a) Except as otherwise provided in subsection (b) of this section:

(1) If the marriage was entered into within this state, an action for divorce is maintainable if one of the parties is an actual bona fide resident of this state at the time of commencement of the action, without regard to the length of time residency has continued; or

(2) If the marriage was not entered into within this state, an action for divorce is maintainable if:

(A) One of the parties was an actual bona fide resident of this state at the time the cause of action arose, or has become a resident since that time; and

(B) The residency has continued uninterrupted through the one-year period immediately preceding the filing of the action.

(b) An action for divorce cannot be maintained if the cause for divorce is adultery, whether the cause of action arose in or out of this state, unless one of the parties, at the commencement of the action, is a bona fide resident of this state. In such case, if the respondent is a nonresident of this state and cannot be
personally served with process within this state, the action is not maintainable unless the petitioner has been an actual bona fide resident of this state for at least one year next preceding the commencement of the action; or

(c) When a divorce is granted in this state upon constructive service of process and personal jurisdiction is thereafter obtained of the respondent in the case, the court may order all or any portion of the relief that has been demanded in the pleadings.

§48-5-106. Venue of actions for divorce.

(a) If the respondent in an action for divorce is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent in an action for divorce is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

§48-5-107. Parties to a divorce action.

(a) Either or both of the parties to a marriage may initiate an action for divorce.

(b) A spouse who is under the age of majority has standing in a divorce action to sue, answer, or plead by a next friend.

(c) An incompetent or insane person shall sue, answer or plead by his or her committee. If a person has not been adjudicated incompetent or insane and has not been divested of the power to act on his or her own behalf, it is presumed that the person has the capacity to bring the action or be made a party respondent. This presumption may be rebutted by evidence
which shows that the person cannot reasonably understand the
nature and purpose of the action and the effect of his or her acts
with reference to the action.

(d) The appointment of a guardian ad litem for a minor, an
incompetent or an insane party is not required unless specifi-
cally ordered by the judge or law master hearing the action.

(e) Anyone charged as a particeps criminis shall be made a
party to a divorce action, upon his or her application to the
court, subject to such terms and conditions as the court may
prescribe.

(f) In a divorce action where the interests of the minor
children of the parties are or may be substantially different from
those of either or both of the parents, and the best interests of
the children may be in conflict with the desires of either or both
parents, the court may make the children parties respondent and
appoint a guardian ad litem to advocate and protect their rights
and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

A circuit judge may order a divorce if the complaint alleges
that irreconcilable differences exist between the parties and an
answer is filed admitting that allegation. A complaint alleging
irreconcilable differences shall set forth the names of any
dependent children of either or both of the parties. A divorce on
this ground does not require corroboration of the irreconcilable
differences or of the issues of jurisdiction or venue. The court
may approve, modify or reject any agreement of the parties and
make orders concerning spousal support, custodial responsibil-
ity, child support, visitation rights or property interests.

(a) A divorce may be ordered when the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year. The separation may occur as a result of the voluntary act of one of the parties or the mutual consent of both parties.

(b) Allegations of res judicata or recrimination with respect to any other alleged grounds for divorce are not a bar to either party obtaining a divorce on the ground of voluntary separation.

(c) When required by the circumstances of a particular case, the court may receive evidence bearing on alleged marital misconduct and may consider issues of fault for the limited purpose of deciding whether spousal support should be awarded. Establishment of fault does not affect the right of either party to obtain a divorce on the ground of voluntary separation.

§48-5-203. Grounds for divorce; cruel or inhuman treatment.

(a) A divorce may be ordered for cruel or inhuman treatment by either party against the other. Cruel or inhuman treatment includes, but is not limited to, the following:

(1) Reasonable apprehension of bodily harm;

(2) False accusation of adultery or homosexuality; or

(3) Conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable.

(b) It is not necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce.
§48-5-204. Grounds for divorce; adultery.

A divorce may be ordered for adultery. Adultery is the voluntary sexual intercourse of a married man or woman with a person other than the offender's wife or husband. The burden is on the party seeking the divorce to prove the alleged adultery by clear and convincing evidence.

§48-5-205. Grounds for divorce; conviction of crime.

A divorce may be ordered when either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime that is a felony, and the conviction is final.

§48-5-206. Grounds for divorce; permanent and incurable insanity.

(a) A divorce may be ordered for permanent and incurable insanity, only if the person is permanently and incurably insane and has been confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint and the court has heard competent medical testimony that such insanity is permanently incurable.

(b) A court granting a divorce on this grounds may in its discretion order support and maintenance for the permanently incurably insane party by the other.

(c) In an action for divorce or annulment, where the petitioner is permanently incurably insane, the respondent shall not enter a plea of recrimination based upon the insanity of the petitioner.

§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.
(a) A divorce may be ordered for habitual drunkenness of either party subsequent to the marriage.

(b) A divorce may be ordered for the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic or dangerous drug defined in this code.

§48-5-208. Grounds for divorce; desertion.

A divorce may be ordered to the party abandoned, when either party willfully abandons or deserts the other for six months.

§48-5-209. Grounds for divorce; abuse or neglect of a child.

(a) A divorce may be ordered for abuse or neglect of a child of the parties or of one of the parties, “abuse” meaning any physical or mental injury inflicted on such child including, but not limited to, sexual molestation; and “neglect” is willful failure to provide, by a party who has legal responsibility for such child, the necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of such child.

(b) A divorce shall not be granted on this ground except upon clear and convincing evidence sufficient to justify permanently depriving the offending party of any allocation of custodial responsibility for the abused or neglected child.

PART 3. DEFENSES.

§48-5-301. When a divorce not to be granted.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three
years before the institution of the action; nor shall a divorce be
granted for any cause when it appears that the offense charged
has been condoned, or was committed by the procurement or
connivance of the plaintiff, or that the plaintiff has, within three
years before the institution of action, been guilty of adultery not
condoned, but such exception shall not be applicable to causes
of action brought pursuant to sections 5-201 and 5-202 of this
chapter. The defense of collusion shall not be pleaded as a bar
to a divorce.

PART 4. PRACTICE AND PROCEDURE.

§48-5-401. Verification of pleadings.

All pleadings in a divorce action must be verified by the
party in whose name they are filed.

§48-5-402. Petition for divorce.

(a) An action for divorce is instituted by a verified petition,
and the formal style and the caption for all pleadings is “In Re
the marriage of ________ and ________”. The parties shall be
identified in all pleadings as “petitioner” and “respondent”.

(b) The petition must set forth the ground or grounds for
divorce. It is not necessary to allege the facts constituting a
ground relied on, and a petition or counter-petition is sufficient
if a ground for divorce is alleged in the language of the statute
as set forth in this article. A judge or law master has the
discretionary authority to grant a motion to require a more
definite and certain statement, set forth in ordinary and concise
language, alleging facts and not conclusions of law.

(c) If the jurisdiction of the circuit court to grant a divorce
depends upon the existence of certain facts, including, but not
limited to, facts showing domicil or domicil for a certain length
of time, the petition must allege those facts. It is not necessary
that allegations showing requisite domicil be in the language of
the statute, but they should conform substantially thereto so that
everything material to the fact of requisite domicil can be
ascertained therefrom.

(d) A petition shall not be taken for confessed, and whether
the respondent answers or not, the case shall be tried and heard
independently of the admissions of either party in the pleadings
or otherwise. No judgment order shall be granted on the
uncorroborated testimony of the parties or either of them,
except for a proceeding in which the grounds for divorce are
irreconcilable differences.

§48-5-403. Answer to petition.

(a) The responsive pleading to a petition for divorce is
denominated an answer. The form and requisites for an answer
to a petition for divorce are governed by the rules of civil
procedure for trial courts of record.

(b) Except as provided in subsection (c) of this section, an
allegedly guilty party who relies upon an affirmative defense
must assert such defense by both pleadings and proof. Affirma-
tive defenses include, but are not limited to, condonation,
connivance, collusion, recrimination, insanity, and lapse of
time.

(c) In an action in which a party seeks a divorce based on
an allegation that the parties have lived separate and apart in
separate places of abode without any cohabitation and without
interruptation for one year, the affirmative defenses including,
but not limited to, condonation, connivance, collusion, recrimi-
nation, insanity, and lapse of time, shall not be raised.

§48-5-404. Advance filing of divorce petition in actions alleging
abandonment or voluntary separation.
(a) At any time after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation or after a party is abandoned or deserted, either party living separate and apart or the party abandoned may apply for temporary relief in accordance with the provisions of part 5 of this article by instituting an action for divorce alleging that the petitioner reasonably believes that the period of living separate and apart or of abandonment will continue for the periods prescribed by the applicable provisions of sections 5-202 and 5-208.

(b) If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provisions of sections 5-202 and 5-208, the divorce action may proceed to a final hearing without a new petition being filed.

(c) The petitioner shall give the respondent at least twenty days' notice of the time, place and purpose of the final hearing, unless the respondent files a verified waiver of notice of further proceedings. If the notice is required to be served, it must be served in the same manner as original process under rule 4(d) of the rules of civil procedure, regardless of whether the respondent has appeared or answered.

§48-5-405. Amendments to pleadings.

Amendments to pleadings in an action for divorce are permitted upon the same general considerations which govern the practice in other proceedings, and are properly allowed for the purpose of making the allegations of the pleading more definite and certain, of asserting an essential allegation which has been omitted, or of including allegations of misconduct committed subsequent to the commencement of the action.
§48-5-501. Relief that may be included in temporary order of divorce.

At the time of the filing of the complaint or at any time after the commencement of an action for divorce under the provisions of this article and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief described in this part, to govern the marital rights and obligations of the parties during the pendency of the action.

§48-5-502. Temporary spousal support.

The court may require either party to pay temporary spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

§48-5-503. Temporary parenting order; child support.

(a) The court shall enter a temporary parenting order in accordance with the provisions of sections 9-203 and 9-204 of this chapter that incorporates a temporary parenting plan.

(b) When the action involves a minor child or children, the court shall require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

c) When the action involves a minor child or children, the court shall provide for medical support for any minor children.

§48-5-504. Attorney’s fees and court costs.

(a) The court may compel either party to pay attorney’s fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. The question of whether or not a party is entitled to temporary spousal support is not
(b) An order for temporary relief awarding attorney fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney fees and costs on appeal.

(c) If it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

§48-5-505. Costs of health care and hospitalization.

As an incident to requiring the payment of temporary spousal support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party. If there is no such existing policy or policies, the court may order that such health care insurance coverage be paid for by a party if the court determines that such health care coverage is available to that party at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, may be deemed to be temporary spousal support.

§48-5-506. Use and occupancy of the marital home.
(a) The court may grant the exclusive use and occupancy of
the marital home to one of the parties during the pendency of
the action, together with all or a portion of the household goods,
furniture and furnishings, reasonably necessary for such use and
occupancy.

(b) The court may require payments to third parties in the
form of home loan installments, land contract payments, rent,
payments for utility services, property taxes and insurance
coverage. If these third party payments are ordered, the court
may specify whether such payments or portions of payments
are temporary spousal support, temporary child support, a
partial distribution of marital property or an allocation of
marital debt.

(c) If the court does not set forth in the temporary order that
all or a portion of payments made to third parties pursuant to
this section are to be deemed temporary child support, then all
the payments made pursuant to this section are deemed to be
temporary spousal support. The court may order third party
payments to be made without denoting them as either
temporary spousal support or temporary child support, reserving
such decision until the court determines the interests of the
parties in marital property and equitably divides the same. At
the time the court determines the interests of the parties in
marital property and equitably divides the same, the court may
consider the extent to which payments made to third parties
under the provisions of this subdivision have affected the rights
of the parties in marital property and may treat these payments
as a partial distribution of marital property notwithstanding the
fact that these payments were denominated temporary spousal
support or temporary child support or not so denominated under
the provisions of this section.
(d) If the payments are not designated in an order and the parties have waived any right to receive spousal support, the court may designate the payments upon motion by any party.

(e) Nothing contained in this section shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-507. Use and possession of motor vehicles.

(a) As an incident to requiring the payment of temporary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties during the pendency of the action.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and payments made to third parties pursuant to this section are deemed to be temporary spousal support, subject to any reservation provided for in subsection (c) of this section.

(c) The court may order that third party payments made pursuant to this section be made without denominating them as temporary spousal support, reserving that decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary spousal support or not so denominated under the provisions of this section.
(d) Nothing contained in this section will abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-508. Preservation of the properties of the parties.

(a) If the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter an order that is reasonably necessary to preserve the estate of either or both of the parties.

(b) The court may impose a constructive trust, so that the property is forthcoming to meet any order that is made in the action, and may compel either party to give security to comply with the order, or may require the property in question to be delivered into the temporary custody of a third party.

(c) The court may order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preservation of property under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property. The court may release all or any part of such protected property for sale and substitute all or a portion of the proceeds of the sale for such property.

*§48-5-509. Enjoining abuse.*

(a) The court may enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with

*Clerk's Note:* This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
the custodial or visitation rights of the other. This order may permanently enjoin the offending party from:

(1) Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

(2) Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

(3) Verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief that may be appropriate for inclusion under the provisions of article 27 of this chapter.


(a) In ordering temporary relief under the provisions of this part 5, the court shall consider the financial needs of the parties, the present income of each party from any source, their income-earning abilities and the respective legal obligations of each party to support himself or herself and to support any other persons.

(b) Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary spousal support and temporary child support are to be made from a party’s income and not from the corpus of a party’s separate estate, and an award of such relief shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court: Provided, That child support shall be established in accordance with the child support guidelines set forth in article 13 of this chapter.

§48-5-511. Disclosure of assets.
To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements set forth in article 7 of this chapter prior to the hearing for temporary relief. The form for this disclosure shall substantially comply with the form promulgated by the supreme court of appeals, pursuant to said section. If either party fails to timely file a complete disclosure as required by this section or as ordered by the court, the court may accept the statement of the other party as accurate.

§48-5-512. Ex parte orders granting temporary relief.

An ex parte order granting all or part of the relief provided for in this part 5 may be granted without written or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party’s attorney can be heard in opposition. The potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions is not exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial
order under the provisions of this section or part 5-601, et seq.; and

(2) The moving party or his or her attorney certifies in writing any effort that has been made to give the notice and the reasons supporting his or her claim that notice should not be required.

§48-5-513. Granting of ex parte relief.

(a) Every ex parte order granted without notice must:

(1) Be endorsed with the date and hour of issuance;

(2) Be filed forthwith in the circuit clerk’s office and entered of record; and

(3) Set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the moving party before the adverse party or his or her attorney can be heard in opposition.

(b) The order granting ex parte relief must fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time fixed for hearing, the hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance must be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief must be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a motion for temporary relief, the court shall set aside the ex parte order.
At any time after ex parte relief is granted, and on two
days’ notice to the party who obtained the relief or on such
shorter notice as the court may direct, the adverse party may
appear and move the court to set aside or modify the ex parte
order on the grounds that the effects of the order are onerous or
otherwise improper. In that event, the court shall proceed to
hear and determine such motion as expeditiously as the ends of
justice require.

§48-5-514. Temporary order not subject to appeal or review.

An order granting temporary relief may not be the subject
of an appeal or a petition for review.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-601. Relief that may be included in final order of divorce.

In ordering a divorce, the court may order additional relief,
including, but not limited to, the relief described in the follow-
ing sections of this part 6.

§48-5-602. Court may require payment of spousal support.

The court, in ordering a divorce may require either party to
pay spousal support in accordance with the provisions of article
8-101, et seq., of this chapter.

§48-5-603. Relief regarding minor child or children.

(a) If the action involves a minor child or children, the court
may, if appropriate, order the allocation of custodial responsi-
bility and the allocation of decision-making responsibility in
accordance with the provisions of article 9-101, et seq., of this
chapter.
(b) If the action involves a minor child or children, the court shall order either or both parties to pay child support in accordance with the provisions of articles 11-101, et seq., and 13-101, et seq., of this chapter.

(c) If the action involves a minor child or children, the court shall order medical support to be provided for the child or children in accordance with the provisions of article 12-101, et seq., of this chapter.

§48-5-604. Use and occupancy of marital home.

(a) A circuit court may award the exclusive use and occupancy of the marital home to a party. An order granting use and occupancy of the marital home shall include the use of any necessary household goods, furniture and furnishings. The order shall establish a definite period for the use and occupancy, ending at a specific time set forth in the order, subject to modification upon the petition of either party.

(b) Generally, an award of the exclusive use and occupancy of the marital home is appropriate when necessary to accommodate rearing minor children of the parties. Otherwise, the court may award exclusive use and occupancy only in extraordinary cases supported by specific findings set forth in the order that grants relief.

(c) An order awarding the exclusive use and occupancy of the marital home may also require payments to third parties for home loan installments, land contract payments, rent, property taxes and insurance coverage. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support, child support, a partial distribution of marital property or an allocation of marital debt. Unless the court identifies third
party payments as child support payments or as installment payments for the distribution of marital property, then such payments are spousal support. If the court does not identify the payments and the parties have waived any right to receive spousal support, the court may identify the payments upon motion by any party.

d) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-605. Use and possession of motor vehicles.

(a) A circuit court may award the exclusive use and possession of a motor vehicle or vehicles to either of the parties.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, if coverage is available at reasonable rates. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support or installment payments for the distribution of marital property.

(c) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-606. Relief regarding costs of health care and hospitalization.

As an incident to requiring the payment of spousal support or child support, the court may order either party to provide
medical support to the other party. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be spousal support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of the payments is to be deemed installment payments for the distribution of marital property, then all payments made pursuant to this section are spousal support. The designation of insurance coverage as spousal support under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for spousal support other than insurance for covering the costs of health care and hospitalization.

§48-5-607. Court may order transfer of accounts for recurring expenses.

The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. This section is not intended to affect the liability of the parties for indebtedness on any account incurred before the transfer of the account.

§48-5-608. Court may enjoin abuse.

When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or
by telephone, for the purpose of harassment or threats; or from
harassing or verbally abusing the other in a public place.

§48-5-609. Court may restore to either party his or her property.

Upon ordering a divorce, the court has the power to award
to either of the parties whatever of his or her property, real or
personal, may be in the possession, or under the control, or in
the name, of the other, and to compel a transfer or conveyance.

§48-5-610. Court may order just and equitable distribution of
property.

(a) When the pleadings include a specific request for
specific property or raise issues concerning the equitable
division of marital property, the court shall order such relief as
may be required to effect a just and equitable distribution of the
property and to protect the equitable interests of the parties
therein.

(b) In addition to the disclosure requirements set forth in
part 7-201, et seq., of this chapter, the court may order accounts
to be taken as to all or any part of marital property or the
separate estates of the parties and may direct that the accounts
be taken as of the date of the marriage, the date upon which the
parties separated or any other time in assisting the court in the
determination and equitable division of property.

§48-5-611. Suit money, counsel fees and costs.

(a) Costs may be awarded to either party as justice requires,
and in all cases the court, in its discretion, may require payment
of costs at any time, and may suspend or withhold any order
until the costs are paid.

(b) The court may compel either party to pay attorney’s
fees and court costs reasonably necessary to enable the other
party to prosecute or defend the action in the trial court. An
order for temporary relief awarding attorney fees and court
costs may be modified at any time during the pendency of the
action, as the exigencies of the case or equity and justice may
require, including, but not limited to, a modification which
would require full or partial repayment of fees and costs by a
party to the action to whom or on whose behalf payment of
such fees and costs was previously ordered. If an appeal be
taken or an intention to appeal be stated, the court may further
order either party to pay attorney fees and costs on appeal.

(c) When it appears to the court that a party has incurred
attorney fees and costs unnecessarily because the opposing
party has asserted unfounded claims or defenses for vexatious,
wanton or oppressive purposes, thereby delaying or diverting
attention from valid claims or defenses asserted in good faith,
the court may order the offending party, or his or her attorney,
or both, to pay reasonable attorney fees and costs to the other
party.

§48-5-612. Court may order a party to deliver separate property.

Unless a contrary disposition is ordered pursuant to other
provisions of this section, then upon the motion of either party,
the court may compel the other party to deliver to the moving
party any of his or her separate estate which may be in the
possession or control of the respondent party and may make
such further order as is necessary to prevent either party from
interfering with the separate estate of the other.

§48-5-613. Former name of party; restoration.

The court, upon ordering a divorce, shall if requested to do
so by either party, allow such party to resume the name used
prior to his or her first marriage. The court shall, if requested to
do so by either party, allow such party to resume the name of a
§48-5-701. Revision of order concerning spousal support.

After the entry of a final divorce order, the court may revise the order concerning spousal support or the maintenance of the parties and enter a new order concerning the same, as the circumstances of the parties may require.

§48-5-702. Revision of order enjoining abuse.

After entering an order enjoining abuse in accordance with the provisions of section 5-508, the court may from time to time afterward, upon motion of either of the parties and upon proper service, revise the order and enter a new order concerning the same, as the circumstances of the parties and the benefit of children may require.

§48-5-703. Revision of order allocating custodial responsibility and decision-making responsibility.

After entering an order allocating custodial responsibility and decision-making responsibility in accordance with the provisions of sections 9-206 and 9-207, the court may also from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the allocation of custodial responsibility or allocation of decision-making responsibility in accordance with the provisions of article 9 of this chapter, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.
§48-5-704. Revision of order establishing child support.

(a) After entering an order establishing child support in accordance with the provisions of section 5-603, the court may from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the support of the children, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require.

(b) All orders modifying an award of child support must conform to the provisions regarding child support guidelines that are set forth in article 13 of this chapter.

(c) An order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the provisions of the child support guidelines that are set forth in article 13 of this chapter.

§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.

The bureau for child support enforcement may review a child support order and, if appropriate, file a motion with the court for modification of the child support order.

§48-5-706. Revision of order concerning distribution of marital property.

In modifying a final divorce order, the court may, when other means are not conveniently available, alter any prior order
of the court with respect to the distribution of marital property, if:

1. The property is still held by the parties;

2. The alteration of the prior order as it relates the distribution of marital property is necessary to give effect to a modification of spousal support, child support or child custody; or

3. The alteration of the prior order as it relates the distribution of marital property is necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.

§48-5-707. Reduction or termination of spousal support because of de facto marriage.

(a)(1) In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.

(2) In determining whether an existing award of spousal support should be reduced or terminated because of an alleged de facto marriage between a payee and another person, the court should elicit the nature and extent of the relationship in question. The court should give consideration, without limitation, to circumstances such as the following in determining the relationship of an ex-spouse to another person:

(A) The extent to which the ex-spouse and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as “my
husband” or “my wife”, or otherwise conducting themselves in a manner that evidences a stable marriage-like relationship;

(B) The period of time that the ex-spouse has resided with another person not related by consanguinity or affinity in a permanent place of abode;

(C) The duration and circumstances under which the ex-spouse has maintained a continuing conjugal relationship with the other person;

(D) The extent to which the ex-spouse and the other person have pooled their assets or income or otherwise exhibited financial interdependence;

(E) The extent to which the ex-spouse or the other person has supported the other, in whole or in part;

(F) The extent to which the ex-spouse or the other person has performed valuable services for the other;

(G) The extent to which the ex-spouse or the other person has performed valuable services for the other’s company or employer;

(H) Whether the ex-spouse and the other person have worked together to create or enhance anything of value;

(I) Whether the ex-spouse and the other person have jointly contributed to the purchase of any real or personal property;

(J) Evidence in support of a claim that the ex-spouse and the other person have an express agreement regarding property sharing or support; or
(K) Evidence in support of a claim that the ex-spouse and the other person have an implied agreement regarding property sharing or support.

(3) On the issue of whether spousal support should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or terminate spousal support on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of spousal support is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative spousal support shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(6) An award of spousal support in gross shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(7) An award of spousal support shall not be reduced or terminated under the provisions of this subsection for conduct by a spousal support payee that occurred before the first day of October, one thousand nine hundred ninety-nine.

(b) Nothing in this subsection shall be construed to abrogate the requirement that every marriage in this state be solemnized.
ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

§48-6-101. Property settlement or separation agreement defined.

§48-6-201. Effect of separation agreement.

§48-6-202. Agreement for spousal support beyond the death of the payor.

§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

PART 1. DEFINITIONS.

§48-6-101. Property settlement or separation agreement defined.

(a) "Property settlement or separation agreement" means a written agreement between a husband and wife whereby they agree to live separate and apart from each other. A separation agreement may also:

(1) Settle the property rights of the parties;

(2) Provide for child support;

(3) Provide for the allocation of custodial responsibility and the determination of decision-making responsibility for the children of the parties;

(4) Provide for the payment or waiver of spousal support by either party; or

(5) Otherwise settle and compromise issues arising from the marital rights and obligations of the parties.

(b) To the extent that an antenuptial agreement affects the property rights of the parties or the disposition of property after
PART 2. RELIEF BASED ON AGREEMENT.

§48-6-201. Effect of separation agreement.

(a) In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, if the court finds that the agreement is fair and reasonable, and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further finds that the parties, through the separation agreement, have expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings, then the court shall conform the relief which it is authorized to order under the provisions of parts 5 and 6, article 5 of this chapter to the separation agreement of the parties. The separation agreement may contractually fix the division of property between the parties and may determine whether spousal support shall be awarded, whether an award of spousal support, other than an award of rehabilitative spousal support or spousal support in gross, may be reduced or terminated because a de facto marriage exists between the spousal support payee and another person, whether a court shall have continuing jurisdiction over the amount of a spousal support award so as to increase or decrease the amount of spousal support to be paid, whether spousal support shall be awarded as a lump sum settlement in lieu of periodic payments, whether spousal support shall continue beyond the death of the payor party or the remarriage of the payee party, or whether the spousal support award shall be enforceable by contempt proceedings or other judicial remedies aside from contractual remedies.

(b) Any award of periodic payments of spousal support shall be deemed to be judicially decreed and subject to subse-
quent modification unless there is some explicit, well ex-
pressed, clear, plain and unambiguous provision to the contrary
set forth in the court-approved separation agreement or the
order granting the divorce. Child support shall, under all
circumstances, always be subject to continuing judicial modifi-
cation.

§48-6-202. Agreement for spousal support beyond the death of
the payor.

When a separation agreement is the basis for an award of
spousal support, the court, in approving the agreement, shall
examine the agreement to ascertain whether it clearly provides
for spousal support to continue beyond the death of the payor
or the payee or to cease in such event. When spousal support is
to be paid pursuant to the terms of a separation agreement
which does not state whether the payment of spousal support is
to continue beyond the death of the payor or payee or is to
cease, or when the parties have not entered into a separation
agreement and spousal support is awarded, the court shall have
the discretion to determine, as a part of its order, whether such
payments of spousal support are to be continued beyond the
death of the payor or payee or cease. In the event neither an
agreement nor an order makes provision for the death of the
payor or payee, spousal support other than rehabilitative
spousal support or spousal support in gross shall cease on the
death of the payor or payee. In the event neither an agreement
nor an order makes provision for the death of the payor,
rehabilitative spousal support continues beyond the payor’s
death, in the absence of evidence that the payor’s estate is likely
to be insufficient to meet other obligations or that other matters
would make continuation after death inequitable. Rehabilitative
spousal support ceases with the payee’s death. In the event
neither an agreement nor an order makes provision for the death
of the payor or payee, spousal support in gross continues
beyond the payor’s or payee’s death.
§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the remarriage of the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the remarriage of the payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the remarriage of the payee. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the remarriage of the payee. Rehabilitative spousal support does not cease upon the remarriage of the payee during the first four years of a rehabilitative period. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support in gross continues beyond the payee’s remarriage.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear
and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount of spousal support, child support or separate maintenance, if any, to be ordered under the provisions of parts 5 and 6, article five of this chapter, as a supplement to or in lieu of the separation agreement:

(1) The length of time the parties were married;

(2) The period of time during the marriage when the parties actually lived together as husband and wife;

(3) The present employment income and other recurring earnings of each party from any source;

(4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market and custodial responsibilities for children;

(5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of article seven of this chapter, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support, child support or separate maintenance: Provided, That for the purposes of determining a spouse's ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;

(6) The ages and the physical, mental and emotional condition of each party;
37. (7) The educational qualifications of each party;

38. (8) Whether either party has foregone or postponed economic, education or employment opportunities during the course of the marriage;

39. (9) The standard of living established during the marriage;

40. (10) The likelihood that the party seeking spousal support, child support or separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;

41. (11) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;

42. (12) The anticipated expense of obtaining the education and training described in subdivision (10) above;

43. (13) The costs of educating minor children;

44. (14) The costs of providing health care for each of the parties and their minor children;

45. (15) The tax consequences to each party;

46. (16) The extent to which it would be inappropriate for a party, because said party will be the custodian of a minor child or children, to seek employment outside the home;

47. (17) The financial need of each party;

48. (18) The legal obligations of each party to support himself or herself and to support any other person;

49. (19) Costs and care associated with a minor or adult child’s physical or mental disabilities; and
Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support, child support or separate maintenance.

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

§48-7-101. Equal division of marital property.
§48-7-102. Division of marital property in accordance with a separation agreement.
§48-7-103. Division of marital property without a valid agreement.
§48-7-104. Determination of worth of marital property.
§48-7-105. Transfers of property to achieve equitable distribution of marital property.
§48-7-106. Findings; rationale for division of property.
§48-7-107. Refusal to transfer property; appointment of special commissioner.
§48-7-108. Interest or title in property prior to judicial determination.
§48-7-109. Tax consequences of transfer of interest or title.
§48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.
§48-7-111. No equitable distribution of property between individuals not married to one another.
§48-7-112. Prospective effect of prior amendments.
§48-7-201. Required disclosure and updates.
§48-7-202. Assets that are required to be disclosed.
§48-7-203. Forms for disclosure of assets.
§48-7-204. Discovery under rules; optional disclosure of tax returns.
§48-7-205. Confidentiality of disclosed information.
§48-7-206. Failure to disclose required financial information.
§48-7-301. Injunction to prevent removal or disposition of property.
§48-7-302. Notice of hearing for injunction; temporary injunction.
§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.
§48-7-304. Setting aside encumbrance or disposition of property to third persons.
§48-7-401. Lis pendens.
§48-7-402. Notice of lis pendens.
§48-7-501. Retroactive effect of amendments.

PART 1. MARITAL PROPERTY DISPOSITION.

§48-7-101. Equal division of marital property.

Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall
divide the marital property of the parties equally between the parties.

§48-7-102. Division of marital property in accordance with a separation agreement.

In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

1. That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or

2. That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

3. That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is so inequitable as to defeat the purposes of this section, and such agreement was inequitable at the time the same was executed.

§48-7-103. Division of marital property without a valid agreement.

In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:
(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;

(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and
34 (B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

37 (4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties:

Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

§48-7-104. Determination of worth of marital property.

1 After considering the factors set forth in section 7-103, the court shall:

3 (1) Determine the net value of all marital property of the parties as of the date of the separation of the parties or as of such later date determined by the court to be more appropriate for attaining an equitable result. Where the value of the marital property portion of a spouse’s entitlement to future payments can be determined at the time of entering a final order in a domestic relations action, the court may include it in reckoning the worth of the marital property assigned to each spouse. In the absence of an agreement between the parties, when the value of the future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and

18 (A) Fix the spouses’ respective shares in such future payments if and when received; or
(B) If it is not possible and practical to fix their share at the
time of entering a final order in a domestic relations action,
reserve jurisdiction to make an appropriate order at the earliest
practical date;

If a valuation is made after a contingent or other future fee
has been earned through the personal services or skills of a
spouse, the portion that is marital property shall be in the same
proportion to the total fee that the personal services or skills
expended before the separation of the parties bears to the total
personal skills or services expended. The provisions of this
subdivision apply to pending cases when the issues of contin-
gent fees or future earned fees have not been finally adjudi-
cated.

(2) Designate the property which constitutes marital
property, and define the interest therein to which each party is
entitled and the value of their respective interest therein. In the
case of an action wherein there is no agreement between the
parties and the relief demanded requires the court to consider
such factors as are described in subdivisions (1), (2), (3) and
(4), section 7-103, if a consideration of factors only under said
subdivisions (1) and (2) would result in an unequal division of
marital property, and if an examination of the factors described
in said subdivisions (3) and (4) produce a finding that a party:
(A) Expended his or her efforts during the marriage in a manner
which limited or decreased such party’s income-earning ability
or increased the income-earning ability of the other party; or
(B) conducted himself or herself so as to dissipate or depreciate
the value of the marital property of the parties, then the court
may, in the absence of a fair and just spousal support award
under the provisions of section 5-602 which adequately takes
into account the facts which underlie the factors described in
subdivisions (3) and (4), section 7-103, equitably adjust the
definition of the parties’ interest in marital property, increasing
the interest in marital property of a party adversely affected by
the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and

(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the
parties, which sum may be paid in installments or otherwise, as
the court may direct;

(D) Direct a party to transfer his or her property to the other
party in substitution for property of the other party of equal
value which the transferor is permitted to retain and assume
ownership of; or

(E) Order a sale of specific property and an appropriate
division of the net proceeds of such sale: Provided, That such
sale may be by private sale, or through an agent or by judicial
sale, whichever would facilitate a sale within a reasonable time
at a fair price.

§48-7-105. Transfers of property to achieve equitable distribution
of marital property.

In order to achieve the equitable distribution of marital
property, the court shall, unless the parties otherwise agree,
order, when necessary, the transfer of legal title to any property
of the parties, giving preference to effecting equitable distribu-
tion through periodic or lump sum payments: Provided, That
the court may order the transfer of legal title to motor vehicles,
household goods and the former marital domicile without
regard to such preference where the court determines it to be
necessary or convenient. In any case involving the equitable
distribution of: (1) Property acquired by bequest, devise,
descent, distribution or gift; or (2) ownership interests in a
business entity, the court shall, unless the parties otherwise
agree, give preference to the retention of the ownership interests
in such property. In the case of such business interests, the court
shall give preference to the party having the closer involvement,
larger ownership interest or greater dependency upon the
business entity for income or other resources required to meet
responsibilities imposed under this article, and shall also
consider the effects of transfer or retention in terms of which
alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection: And provided further, That the court may order the transfer of such business interests to a third party (such as the business entity itself or another principal in the business entity) where the interests of the parties under this article can be protected and at least one party consents thereto.

§48-7-106. Findings; rationale for division of property.

In any order which divides or transfers the title to any property, determines the ownership or value of any property, designates the specific property to which any party is entitled or grants any monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.

§48-7-107. Refusal to transfer property; appointment of special commissioner.

If an order entered in accordance with the provisions of this article requires the transfer of title to property and a party fails
or refuses to execute a deed or other instrument necessary to convey title to such property, the deed or other instrument shall be executed by a special commissioner appointed by the court for the purpose of effecting such transfer of title pursuant to section seven, article twelve, chapter fifty-five of this code.

§48-7-108. Interest or title in property prior to judicial determination.

As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of part 7-401, et seq., and at anytime and in any manner not otherwise prohibited by an order under this chapter, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: Provided, That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date of this section and no purchaser for value need see to the
application of the proceeds of such purchase except to the extent he or she would have been required so to do prior to the effective date of this section: Provided, however, That as to third parties nothing in this section shall be construed to limit or otherwise defeat the interests or rights to property which any husband or wife would have had in property prior to the enactment of this section or prior to the adoption of the doctrine of equitable distribution by the supreme court of appeals on the twenty-fifth day of May, one thousand nine hundred eighty-three: Provided further, That no order entered under this article shall be construed to defeat the title of a third party transferee thereof except to the extent that the power to effect such a transfer of title or interest in such property is secured by a valid and duly perfected lien and, as to any personal property, secured by a duly perfected security interest.

§48-7-109. Tax consequences of transfer of interest or title.

Notwithstanding the provisions of chapter eleven of this code, no transfer of interest in or title to property under this article is taxable as a transfer of property without consideration nor, except as to spousal support, create liability for sales, use, inheritance and transfer or income taxes due the state or any political subdivision nor require the payment of the excise tax imposed under article twenty-two, chapter eleven of this code.

§48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.

Whenever under the terms of this article a court enters an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount,
expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

§48-7-111. No equitable distribution of property between individuals not married to one another.

A court may not award spousal support or order equitable distribution of property between individuals who are not married to one another in accordance with the provisions of article one of this chapter.

§48-7-112. Prospective effect of prior amendments.

The amendments to this section effected by the reenactment of section 48-2-32 during the regular session of the Legislature, 1996, are to be applied prospectively and have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-201. Required disclosure and updates.

In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

§48-7-202. Assets that are required to be disclosed.

The disclosure required by this part 2 may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but are not limited to, real property, savings accounts, stocks and bonds, mortgages and notes, life
insurance, health insurance coverage, interest in a partnership
or corporation, tangible personal property, income from
employment, future interests whether vested or nonvested and
any other financial interest or source.

§48-7-203. Forms for disclosure of assets.

The supreme court of appeals shall make available to the
circuit courts a standard form for the disclosure of assets and
liabilities required by this part 2. The clerk of the circuit court
shall make these forms available to all parties in any divorce
action or action involving child support. All disclosure required
by this part 2 shall be on a form that substantially complies with
the form promulgated by the supreme court of appeals. The
form used shall contain a statement in conspicuous print that
complete disclosure of assets and liabilities is required by law
and deliberate failure to provide complete disclosure as ordered
by the court constitutes false swearing.

§48-7-204. Discovery under rules; optional disclosure of tax
returns.

Nothing contained in this part 2 shall be construed to
prohibit the court from ordering discovery pursuant to rule
eighty-one of the rules of civil procedure. Additionally, the
court may on its own initiative and shall at the request of either
party require the parties to furnish copies of all state and federal
income tax returns filed by them for the past two years and may
require copies of such returns for prior years.

§48-7-205. Confidentiality of disclosed information.

Information disclosed under this part 2 is confidential and
may not be made available to any person for any purpose other
than the adjudication, appeal, modification or enforcement of
judgment of an action affecting the family of the disclosing
parties. The court shall include in any order compelling
6 disclosure of assets such provisions as the court considers
7 necessary to preserve the confidentiality of the information
8 ordered disclosed.

§48-7-206. Failure to disclose required financial information.

1 Any failure to timely or accurately disclose financial
2 information required by this part 2 may be considered as
3 follows:

4 (1) Upon the failure by either party timely to file a complete
5 disclosure statement as required by this part 2 or as ordered by
6 the court, the court may accept the statement of the other party
7 as accurate.

8 (2) If any party deliberately or negligently fails to disclose
9 information which is required by this part 2 and in consequence
10 thereof any asset or assets with a fair market value of five
11 hundred dollars or more is omitted from the final distribution of
12 property, the party aggrieved by the nondisclosure may at any
13 time petition a court of competent jurisdiction to declare the
14 creation of a constructive trust as to all undisclosed assets, for
15 the benefit of the parties and their minor or dependent children,
16 if any, with the party in whose name the assets are held de-
17 clared the constructive trustee, such trust to include such terms
18 and conditions as the court may determine. The court shall
19 impose the trust upon a finding of a failure to disclose such
20 assets as required under this part 2.

21 (3) Any assets with a fair market value of five hundred
22 dollars or more which would be considered part of the estate of
23 either or both of the parties if owned by either or both of them
24 at the time of the action, but which was transferred for inade-
25 quate consideration, wasted, given away or otherwise unac-
26 counted for by one of the parties, within five years prior to the
27 filing of the petition or length of the marriage, whichever is
shorter, shall be presumed to be part of the estate and shall be subject to the disclosure requirement contained in this part 2.

With respect to such transfers the spouse shall have the same right and remedies as a creditor whose debt was contracted at the time the transfer was made under article one-a, chapter forty of this code. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed when such assets are otherwise identified in the statement of net worth.

(4) A person who knowingly provides incorrect information or who deliberately fails to disclose information pursuant to the provisions of this part 2 is guilty of false swearing.

PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.

§48-7-301. Injunction to prevent removal or disposition of property.

Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat a fair distribution of marital property, or the payment of alimony, child support or separate maintenance, an injunction may issue to prevent the removal or disposition and the property may be attached as provided by this code. The court may issue such injunction or attachment without bond.

§48-7-302. Notice of hearing for injunction; temporary injunction.

Any such injunction may be granted upon proper hearing after notice. For good cause shown, a temporary injunction may be issued after an ex parte proceeding with notice and proper hearing for a permanent injunction to be held forthwith thereafter.
§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.

1 The procedures of this part 3 are not intended to apply to the sale of goods in the ordinary course of operating a business but shall apply to the disposition of the major assets of a business.

§48-7-304. Setting aside encumbrance or disposition of property to third persons.

1 Any encumbrance or disposition of property to third persons, except to bona fide purchasers without notice for full and adequate consideration, may be set aside by the court.

PART 4. LIS PENDENS.

§48-7-401. Lis pendens.

1 Upon the commencement of an action under the provisions of this article, any party claiming an interest in real property in which the other party has an interest, may cause a notice of lis pendens to be recorded in the office of the clerk of the county commission of the county wherein the property is located.

§48-7-402. Notice of lis pendens.

1 The notice shall contain the names of the parties, the nature of the complaint, the court having jurisdiction, the date the complaint was filed, and a description of the real property. Such notice shall, from the time of the recording only, be notice to any person thereafter acquiring any interest in such property of the pendency of the complaint. Each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter acquired by descent, or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken
after the recording of the notice, to the same extent as if he were made a party to the complaint. A notice of lis pendens recorded in accordance with this section may be discharged by the court upon substitution of a bond with surety in an amount established by the court, if the court finds that the claim against the property subject to the notice of lis pendens can be satisfied by a monetary award. In cases in which the sale of property is already in process when the notice of lis pendens is filed, and upon application, proper notice and hearing, the court may substitute a lien on the net proceeds of the sale.

PART 5. MISCELLANEOUS PROVISIONS RELATING TO EQUITABLE DISTRIBUTION.

§48-7-501. Retroactive effect of amendments.

Amendments made to the provisions of former article two of this chapter during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to the distribution of marital property, but not an award of spousal support, in all actions filed under the provisions of former article two of this chapter after the twenty-fifth day of May, one thousand nine hundred eighty-three, or actions pending on that date in which a claim for equitable distribution of marital property had been pleaded: Provided, That the amendments are not applicable to actions where, prior to the effective date of the amendments, there has been a final decree entered or the taking of evidence has been completed and the case has been submitted for decision.

ARTICLE 8. SPOUSAL SUPPORT.

§48-8-101. General provisions regarding spousal support.
§48-8-102. Jurisdiction to award spousal support.
§48-8-103. Payment of spousal support.
§48-8-104. Effect of fault or misconduct on award of spousal support.
§48-8-101. General provisions regarding spousal support.

(a) An obligation that compels a person to pay spousal support may arise from the terms of a court order, an antenuptial agreement or a separation agreement. In an order or agreement, a provision that has the support of a spouse or former spouse as its sole purpose is to be regarded as an allowance for spousal support whether expressly designated as such or not, unless the provisions of this chapter specifically require the particular type of allowance to be treated as child support or a division of marital property. Spousal support may be paid as a lump sum or as periodic installments without affecting its character as spousal support.

(b) Spousal support is divided into four classes which are: (1) Permanent spousal support; (2) temporary spousal support, otherwise known as spousal support pendente lite; (3) rehabilitative spousal support; and (4) spousal support in gross.

(c) An award of spousal support cannot be ordered unless the parties are actually living separate and apart from each other.

§48-8-102. Jurisdiction to award spousal support.

Jurisdiction to make a judicial award of spousal support is vested in the circuit courts of this state. A circuit court has jurisdiction to provide for the maintenance of a spouse during the pendency of an appeal to the supreme court of appeals.

*§48-8-103. Payment of spousal support.

Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay spousal support.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of spousal support are to be ordinarily made from a party’s income, but when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of spousal support shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

*§48-8-104. Effect of fault or misconduct on award of spousal support.*

(a) In determining whether spousal support is to be awarded, or in determining the amount of spousal support, if any, to be awarded, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of the marital relationship. However, spousal support shall not be awarded when both parties prove grounds for divorce and are denied a divorce, nor shall an award of spousal support under the provisions of this section be ordered which directs the payment of spousal support to a party determined to be at fault, when, as a grounds granting the divorce, such party is determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a crime which is a felony, subsequent to the marriage if such conviction has become final; or

(3) To have actually abandoned or deserted his or her spouse for six months.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(b) At any time after the entry of an order pursuant to the provisions of this section, the court may, upon motion of either party, revise or alter the order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice.

§48-8-105. Rehabilitative spousal support.

(a) A circuit court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in section 8-103 of this article. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training or academic study.

(b) A circuit court may modify an award of rehabilitative spousal support if a substantial change in the circumstances under which rehabilitative spousal support was granted warrants terminating, extending or modifying the award or replacing it with an award of permanent spousal support. In determining whether a substantial change of circumstances exists which would warrant a modification of a rehabilitative spousal support award, the trial court may consider a reassessment of the dependent spouse’s potential work skills and the availability of a relevant job market, the dependent spouse’s age, health and skills, the dependent spouse’s ability or inability to meet the terms of the rehabilitative plan, and other relevant factors as provided for in section 8-103 of this article.

§48-8-106. Payments out of disposable retired or retainer pay.
Whenever the court enters an order requiring the payment of spousal support, if the court anticipates the payment or any portion thereof is to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U. S. C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

ARTICLE 9. CUSTODY OF CHILDREN.

§48-9-101. Scope of article; legislative findings and declarations.
§48-9-102. Objectives; best interests of the child.
§48-9-103. Parties to an action under this article.
§48-9-104. Parent education classes.
§48-9-201. Parenting agreements.
§48-9-202. Court-ordered services.
§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.
§48-9-205. Permanent parenting plan.
§48-9-207. Allocation of significant decision-making responsibility.
§48-9-208. Criteria for parenting plan; dispute resolution.
§48-9-209. Parenting plan; limiting factors.
§48-9-301. Court-ordered investigation.
§48-9-303. Interview of the child by the court.
§48-9-401. Modification upon showing of changed circumstances or harm.
§48-9-402. Modification without showing of changed circumstances.
§48-9-403. Relocation of a parent.
§48-9-602. Designation of custody for the purpose of other state and federal statutes.
§48-9-603. Effect of enactment; operative dates.

PART 1. SCOPE; OBJECTIVES; PARTIES AND PARENT EDUCATION CLASSES.
§48-9-101. Scope of article; legislative findings and declarations.

(a) This article sets forth principles governing the allocation of custodial and decision-making responsibility for a minor child when the parents do not live together.

(b) The Legislature finds and declares that it is the public policy of this state to assure that the best interest of children is the court’s primary concern in allocating custodial and decision-making responsibilities between parents who do not live together. In furtherance of this policy, the Legislature declares that a child’s best interest will be served by assuring that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children, to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes, and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child’s custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent;

(5) Caretaking relationships by adults who love the child, know how to provide for the child’s needs, and who place a high priority on doing so;
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(6) Security from exposure to physical or emotional harm; and

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child’s care and control.

(b) A secondary objective of article is to achieve fairness between the parents.

§48-9-103. Parties to an action under this article.

(a) Persons who have a right to be notified of and participate as a party in an action filed by another are:

(1) A legal parent of the child, as defined in section 1-232 of this chapter;

(2) An adult allocated custodial responsibility or decision-making responsibility under a parenting plan regarding the child that is then in effect; or

(3) Persons who were parties to a prior order establishing custody and visitation, or who, under a parenting plan, were allocated custodial responsibility or decision-making responsibility.

(b) In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child’s best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such persons or public agencies do not have standing to initiate an action under this article.

§48-9-104. Parent education classes.
(a) A circuit court shall, by administrative rule or order, and with the approval of the supreme court of appeals, designate an organization or agency to establish and operate education programs designed for parents who have filed an action for divorce, paternity, support, separate maintenance or other custody proceeding and who have minor children. The education programs shall be designed to instruct and educate parents about the effects of divorce and custody disputes on their children and to teach parents ways to help their children and minimize their trauma.

(b) The circuit court shall issue an order requiring parties to an action for divorce involving a minor child or children to attend parent education classes established pursuant to subsection (a) of this section unless the court determines that attendance is not appropriate or necessary based on the conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to attend. The court may also order parties to an action involving paternity, separate maintenance or modification of a divorce decree to attend such classes.

(c) The circuit court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the “parent education fund”, which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the parent education fund shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parent education classes for the
costs of materials and of providing such classes. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(d) The administrative office of the supreme court of appeals shall submit a report to the joint committee on government and finance summarizing the effectiveness of any program of parent education no later than two years from the initiation of the program.

PART 2. PARENTING PLANS.

§48-9-201. Parenting agreements.

(a) If the parents agree to one or more provisions of a parenting plan, the court shall so order, unless it makes specific findings that:

(1) The agreement is not knowing or voluntary; or

(2) The plan would be harmful to the child.

(b) The court, at its discretion and on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or (2), subsection (a) of this section. When there is credible information that child abuse as defined by section 49-1-3 of this code or domestic violence as defined by section 27-202 of this code has occurred, a hearing is mandatory and if the court determines that abuse has occurred, appropriate protective measures shall be ordered.

(c) If an agreement, in whole or in part, is not accepted by the court under the standards set forth in subsection (a) of this section, the court shall allow the parents the opportunity to negotiate another agreement.
§48-9-202. Court-ordered services.

(a)(1) The court shall inform the parents, or require them to be informed, about:

(A) How to prepare a parenting plan;

(B) The impact of family dissolution on children and how the needs of children facing family dissolution can best be addressed;

(C) The impact of domestic abuse on children, and resources for addressing domestic abuse; and

(D) Mediation or other nonjudicial procedures designed to help them achieve an agreement.

(2) The court shall require the parents to attend parent education classes.

(3) If parents are unable to resolve issues and agree to a parenting plan, the court shall require mediation, unless application of the procedural rules promulgated pursuant to the provisions of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation, or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family law master or judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall
not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section, or not to require a parent to have face-to-face meetings with the other parent.

(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

(d) Mediation services authorized under subsection (a) of this section shall be ordered at an hourly cost that is reasonable in light of the financial circumstances of each parent, assessed on a uniform sliding scale. Where one parent’s ability to pay for such services is significantly greater than the other, the court may order that parent to pay some or all of the expenses of the other. State revenues shall not be used to defray the costs for the services of a mediator: Provided, That the supreme court of appeals may use a portion of its budget to pay administrative costs associated with establishing and operating mediation programs: Provided, however, That grants and gifts to the state that may be used to fund mediation are not to be considered as state revenues for purposes of this subsection.

(e) The supreme court of appeals shall establish standards for the qualification and training of mediators.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by
motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(2) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;

(3) The parents' work and child-care schedules for the preceding twelve months;

(4) The parents' current work and child-care schedules; and

(5) Any of the circumstances set forth in section 9-209 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child’s time with each parent when appropriate;

(2) Designation of a temporary residence for the child;
(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with section two hundred seven of this article, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable.

(c) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of section 9-209 and is in the best interest of the child.


(a) After considering the proposed temporary parenting plan filed pursuant to section 9-203 and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last twelve months for performing caretaking functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.
(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in subsection 9-209(a), the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child’s birth;

(2) The name and address of each of the child’s parents and any other individuals with standing to participate in the action under section 9-103;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-four months preceding the filing of an action under this article;
(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility, and any expected changes to these schedules in the near future;

(5) A description of the child’s school and extracurricular activities;

(6) A description of any of the limiting factors as described in section 9-209 that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section 49-1-3 of this code, or domestic violence as defined in section 27-202 has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred
receive the court review that is mandated by subsection 9-201(b).

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections 9-206 through 9-209 of this article, containing:

   (1) A provision for the child’s living arrangements and each parent’s custodial responsibility, which shall include either:

      (A) A custodial schedule that designates in which parent’s home each minor child will reside on given days of the year; or

      (B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

   (2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child; and

   (3) A provision consistent with section 9-202 for resolution of disputes that arise under the plan, and remedies for violations of the plan.

(d) A parenting plan may, at the court’s discretion, contain provisions that address matters that are expected to arise in the event of a party’s relocation, or provide for future modifications in the parenting plan if specified contingencies occur.


(a) Unless otherwise resolved by agreement of the parents under section 9-201 or unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent perform-
ing caretaking functions for the child prior to the parents’ separation or, if the parents never lived together, before the filing of the action, except to the extent required under section 9-209 or necessary to achieve any of the following objectives:

1. To permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions;

2. To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant;

3. To keep siblings together when the court finds that doing so is necessary to their welfare;

4. To protect the child’s welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent’s demonstrated ability or availability to meet a child’s needs;

5. To take into account any prior agreement of the parents that, under the circumstances as a whole including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

6. To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child’s need for stability in light of economic, physical or other circumstances, including the distance between the parents’ residences, the cost and difficulty of transporting the child, the parents’ and child’s daily schedules, and the ability of the parents to cooperate in the arrangement;
(7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and

(8) To consider the stage of a child's development.

(b) In determining the proportion of caretaking functions each parent previously performed for the child under subsection (a) of this section, the court shall not consider the divisions of functions arising from temporary arrangements after separation, whether those arrangements are consensual or by court order. The court may take into account information relating to the temporary arrangements in determining other issues under this section.

(c) If the court is unable to allocate custodial responsibility under subsection (a) of this section because the allocation under that subsection would be manifestly harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in section two hundred nine and 9-403(d) of this article and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the economic, physical and other practical circumstances such as those listed in subdivision (6), subsection (a) of this section.
§48-9-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under section 9-201, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

(1) The allocation of custodial responsibility under section 9-206 of this article;

(2) The level of each parent's participation in past decision-making on behalf of the child;

(3) The wishes of the parents;

(4) The level of ability and cooperation the parents have demonstrated in decision-making on behalf of the child;

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child,
while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

§48-9-208. Criteria for parenting plan; dispute resolution.

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to parenting agreement under section 9-201, the court shall order a method of resolving disputes that serves the child's best interest in light of:

1. The parents' wishes and the stability of the child;
2. Circumstances, including, but not limited to, financial circumstances, that may affect the parents' ability to participate in a prescribed dispute resolution process; and
3. The existence of any limiting factor, as set forth in section 9-209 of this article.

(b) The court may order a nonjudicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting such a person or agency. The disposition of a dispute through a nonjudicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by nonjudicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption or other serious irregularity.

(c) This section is subject to the limitations imposed by section two hundred two of this article.

§48-9-209. Parenting plan; limiting factors.
(a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:

(1) Has abused, neglected or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(3) Has committed domestic violence, as defined in section 27-202;

(4) Has interfered persistently with the other parent’s access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

(b) If a parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child’s parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including the allocation of exclusive custodial responsibility to one of them;

(2) Supervision of the custodial time between a parent and the child;
(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with or proximity to the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court deems necessary to provide for the safety of the child, a child’s parent or any person whose safety immediately affects the child’s welfare.

(c) If a parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of
this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.

(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article. The investigation and report may be made by the guardian ad litem, the staff of the court or other professional social service organization experienced in counseling children and families. The court shall specify the scope of the investigation or evaluation and the authority of the investigator.

(b) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child’s custodian; but the child’s consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled, the investigator’s report may be received in evidence at the hearing.

(c) The investigator shall deliver the investigator’s report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the
court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator’s file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

(d) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.


(a) In its discretion, the court may appoint a guardian ad litem to represent the child’s best interests. The court shall specify the terms of the appointment, including the guardian’s role, duties and scope of authority.

(b) In its discretion, the court may appoint a lawyer to represent the child, if the child is competent to direct the terms of the representation and court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case. The court shall specify the terms of the appointment, including the lawyer’s role, duties and scope of authority.

(c) When substantial allegations of domestic abuse have been made, the court shall order an investigation under section 9-301 or make an appointment under subsection (a) or (b) of this section, unless the court is satisfied that the information
necessary to evaluate the allegations will be adequately presented to the court without such order or appointment.

(d) Subject to whatever restrictions the court may impose or that may be imposed by the attorney-client privilege or by subsection 9-202(d), the court may require the child or parent to provide information to an individual or agency appointed by the court under section 9-301 or subsection (a) or (b) of this section, and it may require any person having information about the child or parent to provide that information, even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law.

(e) The investigator who submits a report or evidence to the court that has been requested under section 9-301 and a guardian ad litem appointed under subsection (a) of this section who submits information or recommendations to the court are subject to cross-examination by the parties. A lawyer appointed under subsection (b) of this section may not be a witness in the proceedings, except as allowed under standards applicable in other civil proceedings.

(f) Services and tests ordered under this section shall be ordered only if at no cost to the individuals involved, or at a cost that is reasonable in light of the available financial resources.

§48-9-303. Interview of the child by the court.

The court, in its discretion, may interview the child in chambers or direct another person to interview the child, in order to obtain information relating to the issues of the case. The interview shall be conducted in accordance with rule 16 of the rules of practice and procedure for family law, as promulgated by the supreme court of appeals.
§48-9-401. Modification upon showing of changed circumstances or harm.

(a) Except as provided in section 9-402 or 9-403, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated therein, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is not working as contemplated and in some specific way is manifestly harmful to the child, even if a substantial change of circumstances has not occurred.

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:

1. Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent’s economic status;

2. A parent’s remarriage or cohabitation; and

3. Choice of reasonable caretaking arrangements for the child by a legal parent, including the child’s placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in subsection (a), section 9-209, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to section 9-209 to protect the child or the child’s parent.
§48-9-402. Modification without showing of changed circumstances.

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by subsection 9-401(a) if the modification is in the child’s best interests, and the modification:

1. Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent’s acquiescence resulting from the other parent’s domestic abuse;
2. Constitutes a minor modification in the plan; or
3. Is necessary to accommodate the reasonable and firm preferences of a child who has attained the age of fourteen.

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

§48-9-403. Relocation of a parent.

(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the
(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days' advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:

(1) The relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

Failure to comply with the notice requirements of this section without good cause may be a factor in the determination of whether the relocation is in good faith under subsection (d) of this section, and is a basis for an award of reasonable expenses and reasonable attorneys fees to another parent that are attributable to such failure.

The supreme court of appeals shall make available through the offices of the circuit clerks and the family law masters a form notice that complies with the provisions of this subsection. The supreme court of appeals shall promulgate procedural rules that provide for an expedited hearing process to resolve issues arising from a relocation or proposed relocation.
(c) When changed circumstances are shown under subsection (a) of this section, the court shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain the same proportion of custodial responsibility being exercised by each of the parents. In making such revision, the court may consider the additional costs that a relocation imposes upon the respective parties for transportation and communication, and may equitably allocate such costs between the parties.

(d) When the relocation constituting changed circumstances under subsection (a) of this section renders it impractical to maintain the same proportion of custodial responsibility as that being exercised by each parent, the court shall modify the parenting plan in accordance with the child’s best interests and in accordance with the following principles:

(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child’s household from significant risk of harm, to pursue a significant employment or educational opportunity, or to be with one’s spouse who is established, or who is pursuing a significant employment or educational opportunity, in another location. The relocating parent has the burden of proving the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially achievable without moving, or by moving to a
location that is substantially less disruptive of the other parent’s relationship to the child.

(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that is reasonable in light of the purpose, and if neither has been exercising a significant majority of custodial responsibility for the child, the court shall reallocate custodial responsibility based on the best interest of the child, taking into account all relevant factors including the effects of the relocation on the child.

(3) If a parent does not establish that the purpose for that parent’s relocation is in good faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court may modify the parenting plan in accordance with the child’s best interests and the effects of the relocation on the child. Among the modifications the court may consider is a reallocation of primary custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall not be ordered if the relocating parent demonstrates that the child’s best interests would be served by the relocation.

(4) The court shall attempt to minimize impairment to a parent-child relationship caused by a parent’s relocation through alternative arrangements for the exercise of custodial responsibility appropriate to the parents’ resources and circumstances and the developmental level of the child.

(e) In determining the proportion of caretaking functions each parent previously performed for the child under the parenting plan before relocation, the court may not consider a division of functions arising from any arrangements made after a relocation but before a modification hearing on the issues related to relocation.
(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law, as promulgated by the supreme court of appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.


(a) If, upon a parental complaint, the court finds a parent intentionally and without good cause violated a provision of the court-ordered parenting plan, it shall enforce the remedy specified in the plan or, if no remedies are specified or they are clearly inadequate, it shall find the plan has been violated and order an appropriate remedy, which may include:

(1) In the case of interference with the exercise of custodial responsibility for a child by the other parent, substitute time for that parent to make up for time missed with the child;

(2) In the case of missed time by a parent, costs in recognition of lost opportunities by the other parent, in child care costs and other reasonable expenses in connection with the missed time;

(3) A modification of the plan, if the requirements for a modification are met under section 9-209, section 9-401, 402 or 403 of this article, including an adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;

(4) An order that the parent who violated the plan obtain appropriate counseling;

(5) A civil penalty, in an amount of not more than one hundred dollars for a first offense, not more than five hundred
dollars for a second offense, or not more than one thousand dollars for a third or subsequent offense, to be paid to the parent education fund as established under section 9-104;

(6) Court costs, reasonable attorney’s fees and any other reasonable expenses in enforcing the plan; and

(7) Any other appropriate remedy.

(b) Except as provided in a jointly submitted plan that has been ordered by the court, obligations established in a parenting plan are independent obligations, and it is not a defense to an action under this section by one parent that the other parent failed to meet obligations under a parenting plan or child support order.

(c) An agreement between the parents to depart from the parenting plan can be a defense to a claim that the plan has been violated, even though the agreement was not made part of a court order, but only as to acts or omissions consistent with the agreement that occur before the agreement is disaffirmed by either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child’s records.

(a)(1) Each parent has full and equal access to a child’s educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the
child’s performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to accomplish; school rules, attendance policies, dress codes and procedures for visiting the school; and information about any psychological testing the school does involving the child.

(2) In addition to the right to receive school records, the nonresidential parent has the right to participate as a member of a parent advisory committee or any other organization comprised of parents of children at the school that the child attends.

(3) The nonresidential parent or noncustodial parent has the right to question anything in the child’s record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court order to the contrary. Neither parent can be compelled against their will to exercise this right by attending conferences jointly with the other parent.

(b)(1) Each parent has full and equal access to a child’s medical records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either parent is required to authorize medical providers to release to the other parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to either parent.

(2) If the child is in the actual physical custody of one parent, that parent is required to promptly inform the other
parent of any illness of the child which requires medical attention.

(3) Each parent is required to consult with the other parent prior to any elective surgery being performed on the child, and in the event emergency medical procedures are undertaken for the child which require the parental consent of either parent, if time permits, the other parent shall be consulted, or if time does not permit such consultation, the other parent shall be promptly informed of the emergency medical procedures: Provided, That nothing contained herein alters or amends the law of this state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.

(c) Each parent has full and equal access to a child’s juvenile court records, process and pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the other parent. Juvenile court records are limited to those records which are normally available to a parent of a child who is a subject of the juvenile justice system.

§48-9-602. Designation of custody for the purpose of other state and federal statutes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent’s rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is deemed to be the custodian of the child for the purposes of such federal and state statutes.
§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of section 9-202, insofar as they provide for parent education and mediation, become operative on the first day of January, two thousand. Until that date, parent education and mediation with regard to custody issues are discretionary unless made mandatory under a particular program or pilot project by rule or direction of the supreme court of appeals or a circuit court.

(c) The provisions of this article that authorize a circuit court in the absence of an agreement of the parents to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility, became operative on the first day of January, two thousand, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to the first day of January, two thousand, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-101. Legislative findings.
§48-10-102. Legislative intent.
§48-10-201. Applicability of definitions.
§48-10-203. Grandparent defined.
§48-10-301. Persons who may apply for grandparent visitation; venue.
§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.
§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

§48-10-403. Appointment of guardian ad litem for the child.

§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.

§48-10-502. Factors to be considered in making a determination as to a grant of visitation to a grandparent.

§48-10-601. Interview of child in chambers.

§48-10-602. Prohibitions on use of child’s written or recorded statement or affidavit; child not to be called as a witness.

§48-10-701. Proof required when an action is pending for divorce, custody, legal separation, annulment or establishment of paternity.

§48-10-702. Proof required when an action is not pending for divorce, custody, legal separation, annulment or establishment of paternity.

§48-10-801. Order granting or refusing grandparent visitation must state findings of fact and conclusions of law.

§48-10-802. Supervised visitation; conditions on visitation.

§48-10-901. Effect of remarriage of the custodial parents.

§48-10-902. Effect of adoption of the child.


§48-10-1002. Termination of grandparent visitation.

§48-10-1101. Attorney’s fees; reasonable costs.

§48-10-1201. Misdemeanor offense for allowing contact between child and person who has been precluded visitation rights; penalties.

**PART 1. GENERAL PROVISIONS.**

§48-10-101. Legislative findings.

1 The Legislature finds that circumstances arise where it is appropriate for circuit courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration.

§48-10-102. Legislative intent.

1 It is the express intent of the Legislature that the provisions for grandparent visitation that are set forth in this article are exclusive.
PART 2. DEFINITIONS.

§48-10-201. Applicability of definitions.

For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.


"Child" means a person under the age of eighteen years who has not been married or otherwise emancipated.

§48-10-203. Grandparent defined.

"Grandparent" means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought.

PART 3. APPLICATION TO THE CIRCUIT COURT FOR GRANDPARENT VISITATION.

§48-10-301. Persons who may apply for grandparent visitation; venue.

A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court of the county in which that child resides for an order granting visitation with his or her grandchild.

PART 4. PROCEEDINGS FOR VISITATION FOR GRANDPARENTS.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.
(a) The provisions of this section apply to any pending actions for divorce, custody, legal separation, annulment or establishment of paternity.

(b) After the commencement of the action, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the circuit court for an order granting visitation. A grandparent moving for an order of visitation will not be afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

(a) The provisions of this section apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(b) A grandparent may petition the circuit court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under this section is filed, the matter shall be styled "In re grandparent visitation of [petitioner's(s') name(s)]."

§48-10-403. Appointment of guardian ad litem for the child.

When a motion or petition is filed seeking grandparent visitation, the court, on its own motion or upon the motion of a
party or grandparent, may appoint a guardian ad litem for the child to assist the court in determining the best interests of the child regarding grandparent visitation.

PART 5. FACTORS AFFECTING A DECISION TO GRANT VISITATION FOR GRANDPARENTS.

§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.

The circuit court shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best interests of the child and would not substantially interfere with the parent-child relationship.

§48-10-502. Factors to be considered in making a determination as to a grant of visitation to a grandparent.

In making a determination on a motion or petition the court shall consider the following factors:

1. The age of the child;
2. The relationship between the child and the grandparent;
3. The relationship between each of the child’s parents or the person with whom the child is residing and the grandparent;
4. The time which has elapsed since the child last had contact with the grandparent;
5. The effect that such visitation will have on the relationship between the child and the child’s parents or the person with whom the child is residing;
6. If the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child;
(7) The time available to the child and his or her parents, giving consideration to such matters as each parent’s employment schedule, the child’s schedule for home, school and community activities, and the child’s and parents’ holiday and vacation schedule;

(8) The good faith of the grandparent in filing the motion or petition;

(9) Any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent;

(10) Whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child’s parent or parents;

(11) Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent’s residence;

(12) The preference of the parents with regard to the requested visitation; and

(13) Any other factor relevant to the best interests of the child.

PART 6. INTERVIEW OF CHILD BY JUDGE.

§48-10-601. Interview of child in chambers.

In considering the factors listed in section 10-502 for purposes of determining whether to grant visitation, establishing a specific visitation schedule, and resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, the court, in its discretion, may interview in chambers
any or all involved children regarding their wishes and concerns. No person shall be present other than the court, the child, the child’s attorney or guardian ad litem, if any, and any necessary court personnel.

§48-10-602. Prohibitions on use of child’s written or recorded statement or affidavit; child not to be called as a witness.

(a) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding grandparent visitation matters, and the court, in considering the factors listed in section 10-502 of this article for purposes of determining whether to grant any visitation, establishing a visitation schedule, or resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, shall not accept or consider such a written or recorded statement or affidavit.

(b) A child shall not be called as a witness in any proceeding to determine whether grandparent visitation should be awarded.

PART 7. PROOF REQUIRED FOR GRANT OF GRANDPARENT VISITATION.

§48-10-701. Proof required when action is pending for divorce, custody, legal separation, annulment or establishment of paternity.

If a motion for grandparent visitation is filed in a pending action for divorce, custody, legal separation, annulment or establishment of paternity pursuant to section 21-401, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child and that:
(1) The party to the divorce through which the grandparent is related to the minor child has failed to answer or otherwise appear and defend the cause of action; or

(2) The whereabouts of the party through which the grandparent is related to the minor child are unknown to the party bringing the action and to the grandparent who filed the motion for visitation.

§48-10-702. Proof required when action is not pending for divorce, custody, legal separation, annulment or establishment of paternity.

(a) If a petition is filed pursuant to section 10-402 when the parent through whom the grandparent is related to the grandchild does not: (1) Have custody of the child; (2) share custody of the child; or (3) exercise visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child.

(b) If a petition is filed pursuant to section 10-402, there is a presumption that visitation privileges need not be extended to the grandparent if the parent through whom the grandparent is related to the grandchild has custody of the child, shares custody of the child, or exercises visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose. This presumption may be rebutted by clear and convincing evidence that an award of grandparent visitation is in the best interest of the child.

PART 8. ORDERS GRANTING OR REFUSING GRANDPARENT VISITATION.

§48-10-801. Order granting or refusing grandparent visitation must state findings of fact and conclusions of law.
An order granting or refusing the grandparent’s motion or petition for visitation must state in writing the court’s findings of fact and conclusions of law.

§48-10-802. Supervised visitation; conditions on visitation.

In the court’s discretion, an order granting visitation privileges to a grandparent may require supervised visitation or may place such conditions on visitation that it finds are in the best interests of the child, including, but not limited to, the following:

1. That the grandparent not attempt to influence any religious beliefs or practices of the children in a manner contrary to the preferences of the child’s parents;

2. That the grandparent not engage in, permit or encourage activities, or expose the grandchild to conditions or circumstances, that are contrary to the preferences of the child’s parents; or

3. That the grandparent not otherwise act in a manner to contradict or interfere with child-rearing decisions made by the child’s parents.

PART 9. EFFECT OF REMARRIAGE OR ADOPTION ON GRANDPARENT VISITATION.

§48-10-901. Effect of remarriage of the custodial parent.

The remarriage of the custodial parent of a child does not affect the authority of a circuit court to grant reasonable visitation to any grandparent.

§48-10-902. Effect of adoption of the child.
If a child who is subject to a grandparent visitation order under this article is later adopted, the order for grandparent visitation is automatically vacated when the order for adoption is entered, unless the adopting parent is a stepparent, grandparent or other relative of the child.

**PART 10. MODIFICATION OR TERMINATION OF GRANDPARENT VISITATION.**


Any circuit court that grants visitation rights to a grandparent shall retain jurisdiction throughout the minority of the minor child with whom visitation is granted to modify or terminate such rights as dictated by the best interests of the minor child.

§48-10-1002. Termination of grandparent visitation.

A circuit court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of a preponderance of the evidence that a grandparent granted visitation has materially violated the terms and conditions of the order of visitation.

**PART 11. ATTORNEY’S FEES AND COSTS.**

§48-10-1101. Attorney’s fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court may order payment of reasonable attorney’s fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.

**PART 12. OFFENSES.**

§48-10-1201. Misdemeanor offense for allowing contact between child and person who has been precluded visitation rights; penalties.
Any grandparent who knowingly allows contact between a minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than thirty days or fined not less than one hundred dollars nor more than one thousand dollars.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-101. General provisions relating to child support.

(a) It is one of the purposes of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child’s parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) When the domestic relations action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to article 13-101, et seq., of this chapter. Payments of child support are to be ordinarily made from a party’s income, but in cases when the income is not sufficient to adequately provide for those payments, the
court may, upon specific findings set forth in the order, order
the party required to make those payments to make them from
the corpus of his or her separate estate.

§48-11-102. Required information in support orders.

(a) Any order which provides for the custody or support of
a minor child shall include:

(1) The name of the custodian;
(2) The amount of the support payments;
(3) The date the first payment is due;
(4) The frequency of the support payments;
(5) The event or events which trigger termination of the
  support obligation;
(6) A provision regarding wage withholding;
(7) The address where payments shall be sent;
(8) A provision for medical support;
(9) When child support guidelines are not followed, a
  specific written finding pursuant to section 13-702.

(b) Effective the first day of October, one thousand nine
hundred ninety-nine, any order entered that provides for the
payment of child support shall also include a statement that
requires both parties to report any changes in gross income,
either in source of employment or in the amount of gross
income, to the bureau for child support enforcement and to the
other party. The notice shall not be required if the change in
gross income is less than a fifteen percent change in gross
income.
(c) All child support orders shall contain a notice which contains language substantially similar to the following: "The amount of the monthly child support can be modified as provided by law based upon a change in the financial or other circumstances of the parties if those circumstances are among those considered in the child support formula. In order to make the modification a party must file a motion to modify the child support amount. Unless a motion to modify is filed, the child support amount will continue to be due and cannot later be changed retroactively even though there has been a change of circumstances since the entry of the order. Self help forms for modification can be found at the circuit clerk’s office." The failure of an order to have such a provision does not alter the effectiveness of the order.

§48-11-103. Child support beyond age eighteen.

   (a) Upon a specific finding of good cause shown and upon findings of fact and conclusions of law in support thereof, an order for child support may provide that payments of such support continue beyond the date when the child reaches the age of eighteen, so long as the child is unmarried and residing with a parent and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma: Provided, That such payments may not extend past the date that the child reaches the age of twenty.

   (b) Nothing herein shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen.

   (c) The reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-four shall not, by operation of law, have any effect upon or vacate any order or portion thereof entered under the prior
enactment of this section which awarded educational and related expenses for an adult child accepted or enrolled and making satisfactory progress in an educational program at a certified or accredited college. Any such order or portion thereof shall continue in full force and effect until the court, upon motion of a party, modifies or vacates the order upon a finding that:

(1) The facts and circumstances which supported the entry of the original order have changed, in which case the order may be modified;

(2) The facts and circumstances which supported the entry of the original order no longer exist because the child has not been accepted or is not enrolled in and making satisfactory progress in an educational program at a certified or accredited college, or the parent ordered to pay such educational and related expenses is no longer able to make such payments, in which case the order shall be vacated;

(3) The child, at the time the order was entered, was under the age of sixteen years, in which case the order shall be vacated;

(4) The amount ordered to be paid was determined by an application of child support guidelines in accordance with the provisions of article 13-101, et seq., or legislative rules promulgated thereunder, in which case the order may be modified or vacated; or

(5) The order was entered after the fourteenth day of March, one thousand nine hundred ninety-four, in which case the order shall be vacated.

§48-11-104. Payments out of disposable retired or retainer pay.
Whenever under the terms of article 5-601, et seq., or article 5-501, et seq., a court enters an order requiring the payment of child support, if the court anticipates the payment of such child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

§48-11-105. Modification of child support order.

(a) A circuit court may modify a child support order, for the benefit of the child, when a motion is made that alleges a change in the circumstances of a parent or another proper person or persons. A motion for modification of a child support order may be brought by a custodial parent or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay child support for the child, or by the bureau for child support enforcement of the department of health and human resources of this state.

(b) The provisions of the order may be modified if there is a substantial change in circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered a substantial change.

(c) An order that modifies the amount of child support to be paid shall conform to the support guidelines set forth in article 13-101, et seq., of this chapter unless the court disregards the guidelines or adjusts the award as provided for in section 13-702.
(d) The supreme court of appeals shall make available to the courts a standard form for a petition for modification of an order for support, which form will allege that the existing order should be altered or revised because of a loss or change of employment or other substantial change affecting income, or that the amount of support required to be paid is not within fifteen percent of the child support guidelines. The clerk of the circuit shall make the forms available to persons desiring to file a motion pro se for a modification of the support award.


(a) An expedited process for modification of a child support order may be utilized if:

(1) Either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause;

(2) An increase in income due to promotion, change in employment, reemployment; or

(3) Other such change in employment status.

(b) 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 standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated.

(c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form, and the support calculations
upon the other party by certified mail, return receipt requested, with delivery restricted to the addressee, in accordance 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 bureau for child support enforcement 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.

(d) 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.

(e) 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 provisions 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.

(f) The supreme court of appeals shall develop the standardized form required by this section.
§48-11-107. Modification resulting in reduction and overpayment of support.

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 arrearage is not sufficient to offset the overpayment, then the court may direct the bureau for child support enforcement 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 part 14-401, et seq., 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 overpayment has been owed.

ARTICLE 12. MEDICAL SUPPORT.

§48-12-101. Definitions applicable to medical support enforcement.
§48-12-102. Court-ordered medical support.
§48-12-103. Cost of medical support considered in applying support guidelines.
§48-12-104. Proof of insurance coverage.
§48-12-105. Notice to insurer or employer.
§48-12-106. Copy of court order for medical support.
§48-12-107. Enrollment of child in insurance plan.
§48-12-108. Requirements placed on employer.
§48-12-109. Processing of claims.
§48-12-110. Change of employment.
§48-12-111. Termination of employment; change in insurance coverage.
§48-12-112. Length of coverage.
§48-12-113. Failure to comply with order for court-ordered medical support.
§48-12-114. Effect of failure to maintain court-ordered medical support.
*§48-12-101. Definitions applicable to medical support enforcement.

For the purposes of this article:

1. (1) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of a child or children for whom child support is ordered.

2. (2) "Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.

3. (3) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, psychological, psychiatric or other health care service.

4. (4) "Child" means a child to whom a duty of child support is owed.

5. (5) "Medical care" means medical, dental, optical, psychological, psychiatric or other health care service for children in need of child support.

6. (6) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. § 1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.

§48-12-102. Court-ordered medical support.

In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
children of the parties. In any temporary or final order establish-
ing 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, multiemployer trust 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. If the amount of the award of child
support in the order is determined using the child support
guidelines, the court shall order that nonrecurring or subse-
quently occurring uninsured medical expenses in excess of two
hundred fifty dollars per year per child shall be separately
divided between the parties in proportion to their adjusted gross
incomes.
(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 bureau for child support enforcement 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.

§48-12-103. Cost of medical support considered in applying support guidelines.

The cost of insurance coverage shall be considered by the court in applying the child support guidelines provided for in article 13-101, et seq.

*§48-12-104. Proof of insurance coverage.

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;

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
14 (6) A description of all deductibles; and

15 (7) Five copies of claim forms.

*§48-12-105. Notice to insurer or employer.

1 The custodian for the child shall send the insurer or the
2 obligated parent’s employer the children’s address and notice
3 that the custodian will be submitting claims on behalf of the
4 children. Upon receipt of such notice, or an order for insurance
5 coverage under this section, the obligated parent’s employer,
6 multiemployer trust or union shall, upon the request of the
7 custodian for the child, release information on the coverage for
8 the children, including the name of the insurer.

*§48-12-106. Copy of court order for medical support.

1 A copy of the court order for insurance coverage shall not
2 be provided to the obligated parent’s employer or union or the
3 insurer unless ordered by the court, or unless:

4 (1) The obligated parent, within thirty days of receiving
5 effective notice of the court order, fails to provide to the
6 custodian for the child written proof that the insurance has been
7 obtained or that an application for insurance has been made;

8 (2) The custodian for the child serves written notice by mail
9 at the obligated parent’s last known address of intention to
10 enforce the order requiring insurance coverage for the child;
11 and

12 (3) The obligated parent fails within fifteen days after the
13 mailing of the notice to provide written proof to the custodian
14 for the child that the child has insurance coverage.

*§48-12-107. Enrollment of child in insurance plan.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.
(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 section 12-111.

§48-12-108. Requirements placed on employer.

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 bureau for child support enforcement;

(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;

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(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.

*§48-12-109. Processing of claims.*

(1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

(2) No insurer, employer or multiemployer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

(3) The insurer shall reimburse the custodian for the child or the obligated parent who submits copies of medical bills for the child with proof of payment.

(4) All insurers in this state shall comply with the provisions of section sixteen, article fifteen, chapter thirty-three of this code and section eleven, article sixteen of said chapter and shall provide insurance coverage for the child of a covered employee notwithstanding the amount of support otherwise ordered by the court and regardless of the fact that the child may not be living in the home of the covered employee.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
§48-12-110. Change of employment.

Where an obligated parent changes employment, and the new employer provides the obligated parent's health care coverage, the bureau for child support enforcement 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 14-801, the notice shall operate to enroll the child in the new employer's health care plan.

§48-12-111. Termination of employment; change in insurance coverage.

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.

§48-12-112. Length of coverage.

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.

§48-12-113. Failure to comply with order for court-ordered medical support.

If the obligated parent fails to comply with the order to provide insurance coverage for the child, the court shall:

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(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 section 12-104;

(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 bureau for child support enforcement 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 part 14-201, et seq., and part 14-401, et seq., 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 bureau for child support enforcement 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.

*§48-12-114. Effect of failure to maintain court-ordered medical support.*

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
1 Proof of failure to maintain court ordered insurance
2 coverage for the child constitutes a showing of substantial
3 change in circumstances or increased need and provides a basis
4 for modification of the child support order.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption
of correctness.

§48-13-102. Right of children to share in parents’ level of living.

§48-13-103. Financial contributions of both parents to be considered.

§48-13-201. Use of both parents’ income in determining child support.


§48-13-203. Amount determined by guidelines presumed to be correct.

§48-13-204. Use of worksheets.

§48-13-205. Present income as monthly amounts.

§48-13-301. Determining the basic child support obligation.

§48-13-302. Incomes below the table for determining basic child support obligations.

§48-13-303. Incomes above the table for determining basic child support obligations.

§48-13-401. Basic child support obligation in sole custody cases.

§48-13-402. Division of basic child support obligation in sole custody cases.

§48-13-403. Worksheet for calculating basic child support obligation in sole custody
cases.

§48-13-404. Additional calculation to be made in sole custody cases.


§48-13-503. Split physical custody adjustment.


§48-13-603. Adjustment for obligor’s social security benefits sent directly to the
child; receipt by child supplemental security income.

§48-13-701. Rebuttable presumption that child support award is correct.


§48-13-801. Tax exemption for child due support.

§48-13-802. Investment of child support.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.
This article establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There is a rebuttable presumption, in any proceeding before a family law master or circuit court judge for the award of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded.

§48-13-102. Right of children to share in parents’ level of living.

The Legislature recognizes that children have a right to share in their natural parents’ level of living. Expenditures in families are not made in accordance with subsistence level standards, but are made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents’ resources, regardless of family structure, these guidelines are structured so as to provide that after a consideration of respective parental incomes, child support will be related, to the extent practicable, to the standard of living that children would enjoy if they were living in a household with both parents present.

§48-13-103. Financial contributions of both parents to be considered.

The guidelines promulgated under the provisions of this article take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. These guidelines consider the financial contributions of
7 both parents in relationship to total income, so as to establish
8 and equitably apportion the child support obligation.

PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-201. Use of both parents’ income in determining child
support.

1 A child support order is determined by dividing the total
2 child support obligation between the parents in proportion to
3 their income. Both parents’ adjusted gross income is used to
4 determine the amount of child support.

§48-13-202. Application of expenses and credits in determining
child support.

1 In determining the total child support obligation, the judge
2 or master shall:

3 (1) Add to the basic child support obligation any
4 unreimbursed child health care expenses, work-related child
5 care expenses and any other extraordinary expenses agreed to
6 by the parents or ordered by the judge or master, and

7 (2) Subtract any extraordinary credits agreed to by the
8 parents or ordered by the court or master.

§48-13-203. Amount determined by guidelines presumed to be
correct.

1 The amount of support resulting from the application of the
2 guidelines is presumed to be the correct amount, unless the
3 court, in a written finding or a specific finding on the record,
4 disregards the guidelines or adjusts the award as provided for
5 in section 13-702.

§48-13-204. Use of worksheets.
The calculation of the amount awarded by the support order requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a sole physical custody arrangement. Worksheet B is used for a shared physical custody arrangement.

§48-13-205. Present income as monthly amounts.

To the extent practicable, all information relating to income shall be presented to the court or master based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two and divided by twelve to arrive at a correct monthly amount. If the court or master deems appropriate, such information may be presented in such other forms as the court or master directs.

PART 3. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

The basic child support obligation is determined from the following table of monthly basic child support obligations:

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<th>COMBINED</th>
<th>WEST VIRGINIA</th>
<th>MONTHLY CHILD SUPPORT OBLIGATIONS</th>
<th>(Adjusted for West Virginia's Income Relative to U.S. Averages)</th>
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<td>1828</td>
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<td>269</td>
<td>13500</td>
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<td>2391</td>
<td>2592</td>
<td>2773</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
§48-13-302. Incomes below the table for determining basic child support obligations.
If combined adjusted gross income is below five hundred fifty dollars per month, which is the lowest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall be set at fifty dollars per month or a discretionary amount determined by the court based on the resources and living expenses of the parents and the number of children due support.

§48-13-303. Incomes above the table for determining basic child support obligations.

If combined adjusted gross income is above fifteen thousand dollars per month, which is the highest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall not be less than it would be based on a combined adjusted gross income of fifteen thousand dollars. The court may also compute the basic child support obligation for combined adjusted gross incomes above fifteen thousand dollars by the following:

1. One child — $1,338 + 0.088 x combined adjusted gross income above fifteen thousand dollars per month;

2. Two children — $1,934 + 0.129 x combined adjusted gross income above fifteen thousand dollars per month;

3. Three children — $2,276 + 0.153 x combined adjusted gross income above fifteen thousand dollars per month;

4. Four children — $2,515 + 0.169 x combined adjusted gross income above fifteen thousand dollars per month;

5. Five children — $2,726 + 0.183 x combined adjusted gross income above fifteen thousand dollars per month; and
PART 4. SUPPORT IN SOLE CUSTODY CASES.

§48-13-401. Basic child support obligation in sole custody cases.

For sole custody cases, the total child support obligation consists of the basic child support obligation plus the child's share of any unreimbursed health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court less any extraordinary credits agreed to by the parents or ordered by the court.

§48-13-402. Division of basic child support obligation in sole custody cases.

In a sole custody case, the total basic child support obligation is divided between the parents in proportion to their income. From this amount is subtracted the obligor's direct expenditures of any items which were added to the basic child support obligation to arrive at the total child support obligation.

§48-13-403. Worksheet for calculating basic child support obligation in sole custody cases.

Child support for sole custody cases shall be calculated using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF ________ COUNTY, WEST VIRGINIA

CASE NO. ________

Mother: ________ SS No.: ________ Primary Custodial parent? □ Yes □ No
Father: ________ SS No.: ________ Primary Custodial parent? □ Yes □ No

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
| Chil-
dren | SSN | Date of Birth | Chil-
dren | SSN | Date of Birth |
<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

### PART I. CHILD SUPPORT ORDER

<table>
<thead>
<tr>
<th></th>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MONTHLY GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Exclusive of overtime compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Minus preexisting child support payment</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>b. Minus maintenance paid</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>2. MONTHLY ADJUSTED GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. PERCENTAGE SHARE OF INCOME</td>
<td>%</td>
<td>%</td>
<td>100%</td>
</tr>
<tr>
<td>(Each parent’s income from line 2 divided by Combined Income)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. BASIC OBLIGATION</td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>(Use Line 2 combined to find amount from schedule.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. ADJUSTMENTS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Expenses paid directly by each parent)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>b. Extraordinary Medical Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>c. Extraordinary Expenses (Agreed to by parents or by order of the court.)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>d. Minus Extraordinary Adjustments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>(Agreed to by parents or by order of court.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Total Adjustments</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>(For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent’s totals together for Combined amount.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. TOTAL SUPPORT OBLIGATION</td>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>(Add line 4 and line 5e Combined.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. EACH PARENT’S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Line 3 x line 6 for each parent.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. NONCUSTODIAL PARENT ADJUSTMENT</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Enter noncustodial parent’s line 5e.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. RECOMMENDED CHILD SUPPORT ORDER</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)</td>
<td></td>
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**PART II. ABILITY TO PAY CALCULATION**

(Complete if the noncustodial parent’s adjusted monthly gross income is below $1,550.)

<table>
<thead>
<tr>
<th>10. Spendable Income</th>
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<tr>
<td>(0.80 x line 2 for noncustodial parent only.)</td>
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<td></td>
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<tr>
<td>11. Self Support Reserve</td>
<td>$500</td>
<td>$500</td>
</tr>
<tr>
<td>12. Income Available for Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Line 10 - line 11. if less than $50, then $50)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Adjusted Child Support Order</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Lessor of Line 9 and Line 12.)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
*§48-13-404. Additional calculation to be made in sole custody cases.

1 In cases where the noncustodial parent’s adjusted gross income is below one thousand five hundred fifty dollars per month, an additional calculation in Worksheet A, Part II shall be made. This additional calculation sets the child support order at whichever is lower:

   (1) Child support at the amount determined in Part I; or

   (2) The difference between eighty percent of the noncustodial parent’s adjusted gross income and five hundred dollars, or fifty dollars, whichever is more.

**PART 5. SUPPORT IN SHARED PHYSICAL CUSTODY OR SPLIT PHYSICAL CUSTODY CASES.**


1 Child support for cases with shared physical custody is calculated using Worksheet B. The following method is used only for shared physical custody: That is, in cases where each parent has the child for more than one hundred twenty-seven days per year (thirty-five percent).

   (1) The basic child support obligation is multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent’s portion of the shared custody child support

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
obligation by the percentage of time the child spends with the
other parent. The respective basic child support obligations are
then offset, with the parent owing more basic child support
paying the difference between the two amounts. The transfer for
the basic obligation for the parent owing less basic child
support shall be set at zero dollars.

(2) Adjustments for each parent’s additional direct expenses
on the child are made by apportioning the sum of the parent’s
direct expenditures on the child’s share of any unreimbursed
child health care expenses, work-related child care expenses and
any other extraordinary expenses agreed to by the parents or
ordered by the court or master less any extraordinary credits
agreed to by the parents or ordered by the court or master to each
parent according to their income share. In turn each parent’s net
share of additional direct expenses is determined by subtracting
the parent’s actual direct expenses on the child’s share of any
unreimbursed child health care expenses, work-related child care
expenses and any other extraordinary expenses agreed to by the
parents or by the court or master less any extraordinary credits
agreed to by the parents or ordered by the court or master from
their share. The parent with a positive net share of additional
direct expenses owes the other parent the amount of his or her
net share of additional direct expenses. The parent with zero or
a negative net share of additional direct expenses owes zero
dollars for additional direct expenses.

(3) The final amount of the child support order is determined
by summing what each parent owes for the basic support
obligation and additional direct expenses as defined in subdivi-
sions (1) and (2) of this section. The respective sums are then
offset, with the parent owing more paying the other parent the
difference between the two amounts.


Child support for shared physical custody cases shall be
calculated using the following worksheet:

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.
WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _______ COUNTY, WEST VIRGINIA

CASE NO. _______

Mother: __________ SS No.: _______ Primary Custodial parent? □ Yes □ No

Father: __________ SS No.: _______ Primary Custodial parent? □ Yes □ No

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>PART I. BASIC OBLIGATION</th>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MONTHLY GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Exclusive of overtime compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Minus preexisting child support payment</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>b. Minus maintenance paid</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-l-228(b)(6)</td>
<td>+</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>2. MONTHLY ADJUSTED GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. PERCENTAGE SHARE OF INCOME</td>
<td>%</td>
<td>%</td>
<td>100%</td>
</tr>
<tr>
<td>(Each parent’s income from line 2 divided by Combined Income)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)</td>
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<td></td>
<td>$</td>
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<table>
<thead>
<tr>
<th>PART II. SHARED CUSTODY ADJUSTMENT</th>
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<tbody>
<tr>
<td>5. Shared Custody Basic Obligation</td>
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<td>(line 4 x 1.50)</td>
<td></td>
</tr>
<tr>
<td>6. Each Parent’s Share</td>
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</tr>
<tr>
<td>(Line 5 x each parent’s line 3)</td>
<td>$</td>
</tr>
<tr>
<td>Step</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>7</td>
<td>Overnights with Each Parent (must total 365)</td>
</tr>
<tr>
<td>8</td>
<td>Percentage with Each Parent (Line 7 divided by 365)</td>
</tr>
<tr>
<td>9</td>
<td>Amount Retained (Line 6 x line 8 for each parent)</td>
</tr>
<tr>
<td>10</td>
<td>Each Parent's Obligation (Line 6 - line 9)</td>
</tr>
<tr>
<td>11</td>
<td>AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter $0 for other parent.)</td>
</tr>
<tr>
<td></td>
<td>PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)</td>
</tr>
<tr>
<td>12a</td>
<td>Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)</td>
</tr>
<tr>
<td>12b</td>
<td>Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.</td>
</tr>
<tr>
<td>12c</td>
<td>Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)</td>
</tr>
<tr>
<td>12d</td>
<td>Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)</td>
</tr>
<tr>
<td>12e</td>
<td>Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)</td>
</tr>
<tr>
<td>13</td>
<td>Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)</td>
</tr>
<tr>
<td>14</td>
<td>Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter $0)</td>
</tr>
</tbody>
</table>
**PART IV. RECOMMENDED CHILD SUPPORT ORDER**

16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15) $    

17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.) $    

Comments, calculations, or rebuttals to schedule or adjustments

PREPARED BY: Date:

*§48-13-503. Split physical custody adjustment.*

1 In cases with split physical custody, the court or master shall use Worksheet A (Sole-Parenting) as set forth in section 13-403 to calculate a separate child support order for each parent based on the number of children in that parent’s custody. Instead of transferring the calculated orders between parents, the two orders are offset. The difference of the two orders is the child support order to be paid by the parent with the higher sole-parenting order.

**PART 6. ADJUSTMENT OF SHARES OF SUPPORT OBLIGATIONS.**


*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
(a) The amount of the federal tax credit for child care expenses that can be realized by the custodial parent shall be approximated by deducting twenty-five percent from work-related child care costs, except that no such deduction shall be made for custodial parents with monthly gross incomes below the following amounts:

1. (1) One child—$1,150;
2. (2) Two children—$1,550;
3. (3) Three children—$1,750;
4. (4) Four children—$1,950;
5. (5) Five children—$2,150; and
6. (6) Six or more children—$2,350.

(b) Work-related child care costs net of any adjustment for the child care tax credit shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.


(a) A child support order shall provide for the child’s current and future medical needs by providing relief in accordance with the provisions of article 12-101, et seq., of this chapter.

(b) The payment of a premium to provide health insurance coverage on behalf of the children subject to the order is added to the basic child support obligation and divided between the parents in proportion to their adjusted gross income. The amount added to the basic child support obligation is the actual amount of the total insurance premium that is attributable to the number of children due support. If this amount is not available
or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation is multiplied by the number of children who are the subject of the order and who are covered under the policy.

(c) After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross income, the amount of the health insurance premium added to the basic child support obligation is deducted from the support obligor's share of the total child support obligation if the support obligor is actually paying the premium.

(d) Extraordinary medical expenses shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

§48-13-603. Adjustment for obligor’s social security benefits sent directly to the child; receipt by child of supplemental security income.

(a) If a proportion of the obligor's social security benefit is paid directly to the custodian of his or her dependents who are the subject of the child support order, the following adjustment shall be made. The total amount of the social security benefit which includes the amounts paid to the obligor and the obligee shall be counted as gross income to the obligor. In turn, the child support order will be calculated as described in sections 13-401 through 13-404. To arrive at the final child support amount, however, the amount of the social security benefits sent directly to the child's household will be subtracted from the child support order. If the child support order amount results in a negative amount it shall be set at zero.

(b) If a child is a recipient of disability payments as supplemental security income for aged, blind and disabled, under the provisions of 42 U.S.C. § 1382, et seq., and if support
furnished by an obligor would be considered unearned income that renders the child ineligible for disability payments or medical benefits, no child support order shall be entered for that child. If a support order is entered for the child's siblings or other persons in the household, the child shall be excluded from the calculation of support, and the amount of support for the child shall be set at zero.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.

The guidelines in child support awards apply as a rebuttable presumption to all child support orders established or modified in West Virginia. The guidelines must be applied to all actions in which child support is being determined including temporary orders, interstate (URESA and UIFSA), domestic violence, foster care, divorce, nondissolution, public assistance, nonpublic assistance and support decrees arising despite nonmarriage of the parties. The guidelines must be used by the court or master as the basis for reviewing adequacy of child support levels in uncontested cases as well as contested hearings.


(a) If the court finds that the guidelines are inappropriate in a specific case, the court may either disregard the guidelines or adjust the guidelines-based award to accommodate the needs of the child or children or the circumstances of the parent or parents. In either case, the reason for the deviation and the amount of the calculated guidelines award must be stated on the record (preferably in writing on the worksheet or in the order). Such findings clarify the basis of the order if appealed or modified in the future.
(b) These guidelines do not take into account the economic impact of the following factors that may be possible reasons for deviation:

(1) Special needs of the child or support obligor, including, but not limited to, the special needs of a minor or adult child who is physically or mentally disabled;

(2) Educational expenses for the child or the parent (i.e. those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or costs beyond state and local tax contributions);

(3) Families with more than six children;

(4) Long distance visitation costs;

(5) The child resides with third party;

(6) The needs of another child or children to whom the obligor owes a duty of support;

(7) The extent to which the obligor’s income depends on nonrecurring or nonguaranteed income; or

(8) Whether the total of spousal support, child support and child care costs subtracted from an obligor’s income reduces that income to less than the federal poverty level and conversely, whether deviation from child support guidelines would reduce the income of the child’s household to less than the federal poverty level.

PART 8. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS.

§48-13-801. Tax exemption for child due support.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the custodial parent except in cases of shared custody. In shared custody cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court or master need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the noncustodial parent only if the total of the custodial parent’s income and child support is greater when the exemption is awarded to the noncustodial parent.

*§48-13-802. Investment of child support.*

(a) A circuit judge has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The family law master may recommend and the circuit judge may order such investment when all of the child’s day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

(c) A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child’s guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-101. When action may be brought for child support order.
§48-14-102. Who may bring action for child support order.
§48-14-103. Venue for action for child support order.
§48-14-104. Obligee may seek spousal support in addition to child support.
§48-14-105. Mandatory provision for wage withholding.
§48-14-201. Arrearages stand by operation of law as judgment against support obligor.
§48-14-202. Registration of foreign order.
§48-14-203. Affidavit of accrued support.
§48-14-204. Execution and notice.
§48-14-205. Circuit clerk to provide form affidavits.
§48-14-206. Priority over other legal process.
§48-14-207. Amount to be withheld from income.
§48-14-208. Filing of false affidavit constitutes false swearing.
§48-14-209. Application to support orders of another state.
§48-14-210. Application to income withholding.
§48-14-211. Release of lien.
§48-14-301. Liens against real property by operation of law.
§48-14-302. Affidavit of accrued support.
§48-14-303. Registration of foreign order.
§48-14-304. Full faith and credit to liens arising in another state.
§48-14-305. Release of lien.
§48-14-306. Filing of false affidavit constitutes false swearing.
§48-14-307. Application to support orders of another state.
§48-14-308. Enforcement by bureau for child support enforcement of lien on real property.
§48-14-401. Support orders to provide for withholding from income.
§48-14-402. Commencement of withholding from income without further court action.
§48-14-403. Exception to requirement for automatic withholding from income.
§48-14-404. Enforcement of withholding by bureau for child support enforcement.
§48-14-405. Information required in notice to obligor.
§48-14-406. Notice to source of income; withholding in compliance with order.
§48-14-407. Contents of notice to source of income.
§48-14-408. Determination of amounts to be withheld.
§48-14-409. Time for implementing withholding.
§48-14-410. Sending amounts withheld for bureau; notice.
§48-14-411. Time withholding is to stay in effect.
§48-14-412. Notice of termination of employment or receipt of income.
§48-14-413. Combining withheld income.
§48-14-414. Sending amounts withheld to division; notice.
§48-14-415. Misdemeanor offense of concealing payment of income to obligor; penalty.
§48-14-416. Request to source of income for information regarding payment of income.
§48-14-417. Priority of support collection over other legal process.
§48-14-418. Misdemeanor offense for source of income's action against an obligor; penalty.
§48-14-419. Proposal of legislative rules by bureau for child support enforcement.
§48-14-502. Willful failure or refusal to comply with order to pay support.
§48-14-503. Limitation on length of commitment.
§48-14-504. Violation of work release conditions.
§48-14-505. Misdemeanor offense of escape from custody; penalty.
§48-14-601. Definitions.
§48-14-602. Use of automated administrative enforcement.
§48-14-603. Enforcing support orders through automated administrative enforcement.
§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.
§48-14-801. When monthly payments may be increased to satisfy overdue support.
§48-14-802. Notice of increase in monthly payments to satisfy overdue support.
§48-14-803. Application to support orders of courts of competent jurisdiction.
§48-14-901. Procedure when person contests action proposed to be taken against him.
§48-14-1001. Misrepresentation of delinquent support payments; penalty.

PART 1. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-101. When action may be brought for child support order.

1 An action may be brought in circuit court to obtain an order for the support of a minor child when:

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§48-14-102. Who may bring action for child support order.

An action may be brought under the provisions of section 14-101 by:

(1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The bureau for child support enforcement, on behalf of the state, when the department of health and human resources is providing assistance on behalf of the child in the form of temporary assistance to needy families, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the bureau for child support enforcement.

§48-14-103. Venue for action for child support order.
An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

§48-14-104. Obligee may seek spousal support in addition to child support.

When an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

§48-14-105. Mandatory provision for wage withholding.

Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of 12-101, et seq., and 14-401, et seq.

PART 2. LIENS AGAINST PERSONAL PROPERTY FOR OVERDUE SUPPORT.

§48-14-201. Arrearages stand by operation of law as judgment against support obligor.

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 bureau for child support enforcement 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.
§48-14-202. Registration of foreign order.

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 part 16-601, et seq., of this chapter: Provided, That nothing in this subsection shall prevent the bureau for child support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of part 16-501, et seq., of this chapter.

§48-14-203. Affidavit of accrued support.

(a) The affidavit of accrued support may be filed with the clerk of the circuit court in the county in which the obligee or the obligor resides, or where the obligor's source of income is located.

(b) 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.

(c) 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
§48-14-204. Execution and notice.

(a) 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 bureau for child support enforcement 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 bureau for child support enforcement.

(b) The notice provided for in subsection (a) of this section must 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 bureau for child support enforcement in writing of the reasons why the affidavit is contested and request a meeting with the bureau for child support enforcement; 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 bureau for child support enforcement 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.

(c) Upon being informed by an obligor that he or she desires to contest the affidavit, the bureau for child support enforcement 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.

§48-14-205. Circuit clerk to provide form affidavits.

The clerk of the circuit court shall make available form affidavits for use under the provisions of this article. Such form affidavits shall be provided to the clerk by the bureau for child support enforcement. The notice of the filing of an affidavit shall be in a form prescribed by the bureau for child support enforcement.

§48-14-206. Priority over other legal process.

Writs of execution, suggestions or suggestee executions issued pursuant to the provisions of this article 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 14-401 of this chapter, and shall be effective notwithstanding any exemption that might otherwise be applicable to the same income.

§48-14-207. Amount to be withheld from income.

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 article shall be the same amount which could properly be withheld in the case of a withholding order under the provisions of 14-401, et seq.

§48-14-208. Filing of false affidavit constitutes false swearing.

A person who files a false affidavit is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.
§48-14-209. Application to support orders of another state.

1 The provisions of this article apply to support orders issued by a court of competent jurisdiction of any other state.

§48-14-210. Application to income withholding.

1 The provisions of this article do not apply to income withholding, as provided in section 14-401 of this chapter.

§48-14-211. Release of lien.

1 Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The bureau for child support enforcement shall issue a release in the same manner and with the same effect as liens taken by the tax commissioner pursuant to section twelve, article ten, chapter eleven of this code.

PART 3. LIENS AGAINST REAL PROPERTY FOR OVERDUE SUPPORT.

§48-14-301. Liens against real property by operation of law.

1 An order for support entered by a court of competent jurisdiction will give rise, by operation of law, to a lien against real property of an obligor who resides or owns property within this state for overdue support upon the filing by the obligee, or, when appropriate, the bureau for child support enforcement, an abstract of the order giving rise to the support obligation and an “Affidavit of Accrued Support” setting forth the particulars of the arrearage.

§48-14-302. Affidavit of accrued support.
The affidavit and abstract shall be filed with the clerk of the county commission in which the real property is located. The affidavit shall:

1. Identify the obligee and obligor by name and address, and shall list the obligor's social security number or numbers, if known;
2. Name the court which entered the support order and set forth the date of such entry;
3. Allege that the support obligor is at least thirty days in arrears in the payment of child support;
4. State the total amount of accrued support which has not been paid by the obligor; and
5. List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment.

§48-14-303. Registration of foreign order.

If the duty of support is based upon a foreign order the obligee shall first register the order in accordance with the provisions of article 16 of this chapter: Provided, That nothing in this subsection shall prevent the bureau for child support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of article 16 of this chapter.

§48-14-304. Full faith and credit to liens arising in another state.

This state will accord full faith and credit to liens described in section 301 of this article arising in another state, when the out-of-state agency, party, or other entity seeking to enforce
such a lien complies with the procedural rules relating to recording or serving liens that arise within the other state.

§48-14-305. Release of lien.

Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The bureau for child support enforcement shall issue a release in the same manner and with the same effect as liens taken by the tax commissioner pursuant to section twelve, article ten, chapter eleven of this code.

§48-14-306. Filing of false affidavit constitutes false swearing.

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.

§48-14-307. Application to support orders of another state.

The provisions of this part 14-301, et seq., shall apply to support orders issued by a court of competent jurisdiction of any other state.

§48-14-308. Enforcement by the bureau for child support enforcement of lien on real property.

The bureau for child support enforcement may enforce a lien upon real property pursuant to the provisions of article three, chapter thirty-eight of this code.

PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.

§48-14-401. Support orders to provide for withholding from income.
(a) Every order entered or modified under the provisions of this article that requires the payment of child support or spousal support must 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 support order heretofore or hereafter entered by a court of competent jurisdiction is considered to provide for an order of income withholding, notwithstanding the fact that the support order does not in fact provide for an order of withholding. Income withholding may be instituted under this part 4 for any arrearage without the necessity of additional judicial or legal action.

§48-14-402. Commencement of withholding from income without further court action.

(a) Except as otherwise provided in section 14-403, a support order as described in section 14-401 must contain or must be deemed to contain language requiring automatic income withholding for both current support and for any arrearages to commence without further court action on the date the support order is entered.

(b) 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.

§48-14-403. Exception to requirement for automatic withholding from income.

If 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, the support order may not provide for income
withholding to begin immediately.

(1) The order must 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 bureau for child support
enforcement 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.

(2) 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.

(3) When immediate income withholding is not required
due to the findings required by this section, the bureau for child
support enforcement shall mail a notice to the obligor pursuant
to section 14-405 of this article upon the occurrence of any of
the conditions provided for in subdivision (1) of this section.
§48-14-404. Enforcement of withholding by bureau for child support enforcement.

The withholding from an obligor’s income of amounts payable as spousal or child support shall be enforced by the bureau for child support enforcement in accordance with the provisions of this part 4.

§48-14-405. Information required in notice to obligor.

When income withholding is required, the bureau for child support enforcement 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 1-228 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 bureau for child support enforcement 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.

§48-14-406. Notice to source of income; withholding in compliance with order.

(a) 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 section 403 of this article.

(b) The source of income shall withhold so much of the
obliger'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 part 4 of this
article, shall apply to any subsequent source of income or any
subsequent period of time during which income is received by
the obliger.

(c) In addition to any amounts payable as support withheld
from the obliger'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.

§48-14-407. Contents of notice to source of income.

(a) The source of income of any obliger who is subject to
withholding, upon being given notice of withholding, shall
withhold from such obliger's income the amount specified by
the notice and pay such amount to the bureau for child support
enforcement 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 obliger's dispos-
able 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
(2) That the source of income shall send the amount to be withheld from the obligor's income to the bureau for child support enforcement, along with such identifying information as may be required by the bureau, 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 bureau for child support enforcement or until the source of income notifies the bureau for child support enforcement 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 part 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 bureau for child support enforcement when the employer properly identifies each payment with the information listed in this part 4. 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 part 4 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 bureau for child support enforcement 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.

(b) The commission shall, by administrative rule, establish procedures for promptly refunding to obligors amounts which have been improperly withheld under the provisions of this part 4.

§48-14-408. Determination of amounts to be withheld.

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 subdivision, 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
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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 subdivi-
sion, 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 bureau for child support enforcement has the
authority to prorate the current support obligation in accordance
with the pay cycle of the source of income. This prorated
current support obligation shall be known as the "adjusted
support obligation." The current support obligation or the
adjusted support obligation is the amount, if unpaid, on which
interest will be charged.

(9) When an obligor acts so as to purposefully minimize his
or her income and to thereby circumvent the provisions of this
part 4 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.
§48-14-409. Time for implementing withholding.

1 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.

§48-14-410. Sending amounts withheld to bureau; notice.

1 After implementation in accordance with the provisions of section 14-409, a source of income shall send the amount to be withheld from the obligor's income to the bureau for child support enforcement and shall notify the bureau for child support enforcement of the date of withholding, the same date that the obligor is paid.

§48-14-411. Time withholding is to stay in effect.

1 Withholding of amounts payable as support under the provisions of this part 4 of this article is binding on the source of income until further notice by the bureau for child support enforcement or until the source of income notifies the bureau for child support enforcement of a termination of the obligor's employment in accordance with the provisions of section 14-412.

§48-14-412. Notice of termination of employment or receipt of income.

1 A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this part 4 shall notify the bureau for child support enforcement promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the bureau for child support enforcement with
§48-14-413. Combining withheld amounts.

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 bureau for child support enforcement when the employer properly identifies each payment with the information listed in this part 4. 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 part 4 and is therefore not received by the obligee.

§48-14-414. Sending amounts withheld to division; notice.

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 section 14-407: 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.

§48-14-415. Misdemeanor offense of concealing payment of income to obligor; penalty.

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.

§48-14-416. Request to source of income for information regarding payment of income.

When the bureau for child support enforcement 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.

§48-14-417. Priority of support collection over other legal process.

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.

§48-14-418. Misdemeanor offense for source of income’s action against an obligor; penalty.

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 part 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.
§48-14-419. Proposal of legislative rules by bureau for child support enforcement.

1 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 bureau for child support enforcement and the employer in wage withholding.

PART 5. ENFORCEMENT OF SUPPORT ORDERS BY CONTEMPT PROCEEDINGS.


1 In addition to or in lieu of the other remedies provided by this article for the enforcement of support orders, the bureau for child support enforcement may commence a civil or criminal contempt proceeding in accordance with the provisions of section 1-305 against an obligor who is alleged to have willfully failed or refused to comply with the order of a court of competent jurisdiction requiring the payment of support. Such proceeding shall be instituted by filing with the circuit court a petition for an order to show cause why the obligor should not be held in contempt.

§48-14-502. Willful failure or refusal to comply with order to pay support.

1 If the court finds that the obligor willfully failed or refused to comply with an order requiring the payment of support, the court shall find the obligor in contempt and may do one or more of the following:

(1) Require additional terms and conditions consistent with the court’s support order.
(2) After notice to both parties and a hearing, if requested by a party, on any proposed modification of the order, modify the order in the same manner and under the same requirements as an order requiring the payment of support may be modified under the provisions of part 5-701, et seq. A modification sought by an obligor, if otherwise justified, shall not be denied solely because the obligor is found to be in contempt.

(3) Order that all accrued support and interest thereon be paid under such terms and conditions as the court, in its discretion, may deem proper.

(4) Order the contemnor to pay support in accordance with a plan approved by the bureau for child support enforcement or to participate in such work activities as the court deems appropriate.

(5) If appropriate under the provisions of section 1-305:

(A) Commit the contemnor to the county or regional jail; or

(B) Commit the contemnor to the county or regional jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

§48-14-503. Limitation on length of commitment.

(a) A commitment under subdivision (5) of section 14-502 shall not exceed forty-five days for the first adjudication of contempt or ninety days for any subsequent adjudication of contempt.

(b) An obligor committed under subdivision (5), of section 14-502 shall be released if the court has reasonable cause to believe that the obligor will comply with the court’s orders.
§48-14-504. Violation of work release conditions.

If an obligor is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and violates the conditions of the court, the court may commit the person to the county or regional jail without the privilege provided under said paragraph (B) for the balance of the period of commitment imposed by the court.

§48-14-505. Misdemeanor offense of escape from custody; penalty.

If a person is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and willfully fails to return to the place of confinement within the time prescribed, such person shall be considered to have escaped from custody and shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year.

PART 6. HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT IN INTERSTATE CASES.

§48-14-601. Definitions.

As used in this chapter:

(1) "High-volume automated administrative enforcement" in interstate cases means 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" means 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, seizes assets on behalf of the requesting state.

(3) "Requesting state" means a state transmitting a request for administrative enforcement to another state.

(4) "State" means 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.

§48-14-602. Use of automated administrative enforcement.

The bureau for child support enforcement 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.

§48-14-603. Enforcing support orders through automated administrative enforcement.

(a) The bureau for child support enforcement 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 proce-
dural due process requirements applicable to each case.

(b) 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.

PART 7. BONDS OR SECURITY TO SECURE
PAYMENT OF OVERDUE SUPPORT.

*§48-14-701. Posting of bonds or giving security to guarantee
payment of overdue support.

(a) An obligor with a pattern of overdue support may be
required by order of the family law master or the court to post
bond, give security or some other guarantee to secure payment
of overdue support. The guarantee may include an order
requiring that stocks, bonds or other assets of the obligor be
held in escrow by the court until the obligor pays the support.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which
passed subsequent to this act.
(b) No less than fifteen days before such an order may be entered the children's advocate shall cause the mailing of a notice by first class mail to the obligor informing the obligor of the impending action, his or her right to contest it, and setting forth a date, time and place for a meeting with the children's advocate and the date, time and place of a hearing before the family law master if the impending action is contested.

**PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.**

§48-14-801. When monthly payments may be increased to satisfy overdue support.

(a) For the purpose of securing overdue support, the bureau for child support enforcement has the authority to increase the monthly support payments by as much as one hundred dollars per month to satisfy the arrearage where the obligor:

(1) Owes an arrearage of not less than eight thousand dollars; or

(2) Has not paid support for twelve consecutive months.

(b) An increase in monthly support under this section will be in addition to any amounts withheld from income pursuant to part 4 of this article.

(c) This increase in monthly support may be enforced through the withholding process.

§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

Notice of the increase shall be sent to the obligor at the time such increase is implemented. If the obligor disagrees with the increase in payments, he or she may file, within thirty days
of the date of the notice, a motion with the circuit court in
which the case is situated for a determination of whether there
should be an increase in monthly payments and the amount of
that increase, if any.

§48-14-803. Application to support orders of courts of competent
jurisdiction.

The provisions of sections 14-801 and 14-802 apply to
support orders issued by a court of competent jurisdiction of
this or any other state.

PART 9. PROCEDURES BEFORE THE BUREAU
FOR CHILD SUPPORT ENFORCEMENT.

§48-14-901. Procedure when person contests action proposed to
be taken against him.

(a) In any case arising under the provisions of this article
wherein a notice is served upon a person requiring him or her
to notify the bureau for child support enforcement if the person
is contesting action proposed to be taken against him:

(1) If the person so notified does not submit written reasons
for contesting the action within the time set to contest the
proposed action, and does not request a meeting with the bureau
for child support enforcement, then the bureau for child support
enforcement shall proceed with the proposed action; or

(2) If the person so notified does submit written reasons for
contesting the action within the time set to contest the proposed
action, and requests a meeting with the bureau for child support
enforcement, then the bureau for child support enforcement
shall schedule a meeting at the earliest practicable time with the
person and attempt to resolve the matter informally.
(b) If the matter cannot be resolved informally, the bureau for child support enforcement shall make a determination as to whether the proposed action is proper and should actually occur.

(c) The determination of the bureau for child support enforcement shall be made within forty-five days from the date of the notice which first apprised the person of the proposed action. Upon making the determination, the bureau for child support enforcement shall inform the parties as to whether or not the proposed action will occur, and, if it is to occur, of the date on which it is to begin, and in the case of withholding from income, shall furnish the obligor with the information contained in any notice given to an employer under the provisions of section 14-407 with respect to such withholding.

PART 10. OFFENSES.

§48-14-1001. Misrepresentation of delinquent support payments; penalty.

If any person knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, thus misrepresenting the amount of child support actually due and owing, and if such statement, representation, writing or document causes bureau for support enforcement attorney in reliance thereon to institute an action or proceeding or otherwise commence to enforce a support obligation under this article or under section 1-305, such person is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

For purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.


“Action against a license” means action taken by the bureau for child support enforcement to cause the denial, nonrenewal, suspension or restriction of a license applied for or
held by: (A) A support obligor owing overdue support; or (B) a person who has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.


"Application" means a request to have a license issued, a request for a renewal of an existing license or a request to change the status of an existing license.

§48-15-104. License defined.

"License" means a license, permit, certificate of registration, registration, credential, stamp or other indicia that evidences a personal privilege entitling a person to do an act that he or she would otherwise not be entitled to do, or evidences a special privilege to pursue a profession, trade, occupation, business or vocation.

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.

The following licenses are subject to an action against a license as provided for in this article:

(1) A permit or license issued under chapter seventeen-b of this code, authorizing a person to drive a motor vehicle;

(2) A commercial driver’s license, issued under chapter seventeen-e of this code, authorizing a person to drive a class of commercial vehicle;

(3) A permit, license or stamp issued under article two or two-b, chapter twenty of this code, regulating a person’s activities for wildlife management purposes, authorizing a
person to serve as an outfitter or guide, or authorizing a person
to hunt or fish;

(4) A license or registration issued under chapter thirty of
this code, authorizing a person to practice or engage in a
profession or occupation;

(5) A license issued under article twelve, chapter forty-
seven of this code, authorizing a person to transact business as
a real estate broker or real estate salesperson;

(6) A license or certification issued under article fourteen,
chapter thirty-seven of this code, authorizing a person to
transact business as a real estate appraiser;

(7) A license issued under article twelve, chapter thirty-
three of this code, authorizing a person to transact insurance
business as an agent, broker or solicitor;

(8) A registration made under article two, chapter thirty-two
of this code, authorizing a person to transact securities business
as a broker-dealer, agent or investment advisor;

(9) A license issued under article twenty-two, chapter
twenty-nine of this code, authorizing a person to transact
business as a lottery sales agent;

(10) A license issued under articles thirty-two or thirty-four,
chapter sixteen of this code, authorizing persons to pursue a
trade or vocation in asbestos abatement or radon mitigation;

(11) A license issued under article eleven, chapter twenty-
one of this code, authorizing a person to act as a contractor;

(12) A license issued under article two-c, chapter nineteen
of this code, authorizing a person to act as an auctioneer; and
(13) A license, permit or certificate issued under chapter nineteen of this code, authorizing a person to sell, market or distribute agricultural products or livestock.


The bureau for child support enforcement shall send a written notice of an action against a license to a person who:

1. Owes overdue child support, if the child support arrearage equals or exceeds the amount of child support payable for six months;

2. Has failed for a period of six months to pay medical support ordered under article 12-101, et seq., of this code; or

3. Has failed, after appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

§48-15-203. Exhaustion of other statutory enforcement methods.

In the case of overdue child support or noncompliance with a medical support order, notice of an action against a license shall be served only if other statutory enforcement methods to collect the support arrearage have been exhausted or are not available.

§48-15-204. Service of notice of action against a license.

The bureau shall send a notice of action against a license by regular mail and by certified mail, return receipt requested, to the person’s last-known address or place of business or employment. Simultaneous certified and regular mailing of the written notice shall constitute effective service unless the United States Postal Service returns the mail to the bureau for
child support enforcement within the thirty-day response period marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," or "forwarding order expired." If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the person at his or her place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the person. Acceptance of the certified mail notice signed by the person, the person's attorney, or a competent member of the person's household above the age of sixteen shall be deemed effective service.

§48-15-205. Form of notice of action against a license.

The notice shall be substantially in the following form:
NOTICE OF ACTION AGAINST LICENSE

<table>
<thead>
<tr>
<th>Name and address:</th>
<th>Date:</th>
<th>Case No:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Social Security No:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Circuit Court of County, West Virginia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Section 1.**

☐ The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months child support or more. The amount you owe is calculated to be $___________ as of the ______ day of ________, ________.

☐ The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be $___________ as of the ______ day of ____________, ____________.

☐ The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.

☐ The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.
Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

☐ I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of $ .

☐ I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of $ .

☐ I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.

☐ I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed ✗ __________________________ Date: ______________
Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the_____ day of __________, _______. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:


1 The notice shall advise the person that further failure to comply may result in an action against licenses held by the person, and that any pending application for a license may be denied, renewal of a license may be refused, or an existing license may be suspended or restricted unless, within thirty days of the date of the notice, the person pays the full amount of the child support arrearage or the medical support arrearage, makes a request for a meeting with a representative of the bureau for child support enforcement to arrange a payment plan or to otherwise arrange compliance with existing support orders, or makes a request for a court hearing to the bureau for child support enforcement. An action against a license shall be terminated if the person pays the full amount of the child support arrearage or medical support arrearage, or provides proof that health insurance for the child has been obtained as required by a medical support order or enters into a written plan with the bureau for child support enforcement for the payment of current payments and payment on the arrearage.
§48-15-207. Failure to act in response to notice; entry of order.

If the person fails to take one of the actions described in section 15-206 of this article within thirty days of the date of the notice and there is proof that service on the person was effective, the bureau for child support enforcement shall file a certification with the circuit court setting forth the person's noncompliance with the support order or failure to comply with a subpoena or warrant and the person's failure to respond to the written notice of the potential action against his or her license. If the circuit court is satisfied that service of the notice on the person was effective as set forth in this section, it shall without need for further due process or hearing, enter an order suspending or restricting any licenses held by the person. Upon the entry of the order, the bureau for child support enforcement shall forward a copy to the person and to any appropriate agencies responsible for the issuance of a license.


If the person requests a hearing, the bureau for child support enforcement shall file a petition for a judicial hearing before the family law master. The hearing shall occur within forty-two days of the receipt of the person's request. If, prior to the hearing, the person pays the full amount of the child support arrearage or medical support arrearage or provides health insurance as ordered, the action against a license shall be terminated. No action against a license shall be initiated if the bureau for child support enforcement has received notice that the person has pending a motion to modify the child support order, if that motion was filed prior to the date that the notice of the action against the license was sent by the bureau for child support enforcement. The court shall consider the bureau for child support enforcement's petition to deny, refuse to renew, suspend or restrict a license in accordance with section 15-209.
§48-15-209. 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 bureau for child support enforcement, 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 bureau for child support enforcement.

(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 bureau for child support enforcement 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 bureau for child support enforcement, and without further hearing, order the immediate suspension or restriction of all licenses held by the person.

PART 3. ENFORCEMENT OF ORDER BY LICENSING AUTHORITY.

§48-15-301. Copy of order provided to licensing authority.

(a) The bureau for child support enforcement shall provide the licensing authority with a copy of the order requiring the denial, nonrenewal, suspension or restriction of a license.

(b) Upon receipt of an order requiring the suspension or restriction of a license for nonpayment of child support, the
licensing authority shall immediately notify the applicant or licensee of the effective date of the denial, nonrenewal, suspension or limitation, which shall be twenty days after the date of the notice, direct any licensee to refrain from engaging in the activity associated with the license, surrender any license as required by law, and inform the applicant or licensee that the license shall not be approved, renewed or reinstated until the court or bureau for child support enforcement certifies compliance with court orders for the payment of current child support and arrearage.

(c) The bureau for child support enforcement, in association with the affected licensing authorities, may develop electronic or magnetic tape data transfers to notify licensing authorities of denials, nonrenewals, suspensions and reinstatements.

(d) No liability shall be imposed on a licensing authority for suspending or restricting a license if the action is in response to a court order issued in accordance with this article.

(e) Licensing authorities shall not have jurisdiction to modify, remand, reverse, vacate or stay a court order to deny, not renew, suspend or restrict a license for nonpayment of child support.

§48-15-302. Denial, nonrenewal, suspension or restriction continues until further order or issuance of certificate of compliance.

The denial, nonrenewal, suspension or restriction of a license ordered by the court shall continue until the bureau for child support enforcement files with the licensing authority either a court order restoring the license or a bureau for child support enforcement certification attesting to compliance with court orders for the payment of current child support and arrearage.
§48-15-303. License applicant to certify information regarding child support obligation.

(a) Each licensing authority shall require license applicants to certify on the license application form, under penalty of false swearing, that the applicant does not have a child support obligation, the applicant does have such an obligation but any arrearage amount does not equal or exceed the amount of child support payable for six months, or the applicant is not the subject of a child-support related subpoena or warrant. The application form shall state that making a false statement may subject the license holder to disciplinary action including, but not limited to, immediate revocation or suspension of the license.

(b) A license shall not be granted to any person who applies for a license if there is an arrearage equal to or exceeding the amount of child support payable for six months or if it is determined that the applicant has failed to comply with a warrant or subpoena in a paternity or child support proceeding.

§48-15-304. Procedure where license to practice law may be subject to denial, suspension or restriction.

If a person who has been admitted to the practice of law in this state by order of the supreme court of appeals is determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding, such that his or her other licenses are subject to suspension or restriction under this article, the bureau for child support enforcement may send a notice listing the name and social security number or other identification number to the lawyer disciplinary board established by the supreme court of appeals. The Legislature hereby requests the supreme court of appeals to promptly adopt rules pursuant to its constitutional authority to govern the practice of law that would include as
13 attorney misconduct for which an attorney may be disciplined,
14 situations in which a person licensed to practice law in West
15 Virginia has been determined to be in default under a support
16 order or has failed to comply with a subpoena or warrant in a
17 paternity or child support proceeding.

PART 4. MISCELLANEOUS PROVISIONS.


The provisions of this article apply to all orders issued
before or after the enactment of this article. All child support,
medical support and health insurance provisions in existence on
or before the effective date of this article shall be included in
determining whether a case is eligible for enforcement. This
article applies to all child support obligations ordered by any
state, territory or district of the United States that are being
enforced by the bureau for child support enforcement, that are
payable directly to the obligee, or have been registered in this
state in accordance with the uniform interstate family support
act.

§48-15-402. Effect of determination as to authority of federal
government to require denials, suspensions or
restrictions of licenses.

The provisions of this article have been enacted to conform
to the mandates of the federal “Personal Responsibility and
Work Opportunity Reconciliation Act of 1996”. If a court of
competent jurisdiction should determine, or if it is otherwise
determined that the federal government lacked authority to
mandate the license denials, nonrenewals, suspensions or
restrictions contemplated by this article, then the provisions of
this article shall be null and void and of no force and effect.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.
§48-16-102. Tribunals of state.
§48-16-103. Remedies cumulative.
§48-16-201. Bases for jurisdiction over nonresident.
§48-16-203. Initiating and responding tribunal of state.
§48-16-204. Simultaneous proceedings in another state.
§48-16-205. Continuing, exclusive jurisdiction.
§48-16-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.
§48-16-207. Recognition of controlling child support order.
§48-16-208. Multiple child support orders for two or more obligees.
§48-16-209. Credit for payments.
§48-16-301. Proceedings under article.
§48-16-303. Application of law of state.
§48-16-304. Duties of initiating tribunal.
§48-16-305. Duties and powers of responding tribunal.
§48-16-306. Inappropriate tribunal.
§48-16-307. Duties of support enforcement agency.
§48-16-308. Duty of West Virginia support enforcement commission.
§48-16-309. Private counsel.
§48-16-310. Duties of state information agency.
§48-16-311. Pleadings and accompanying documents.
§48-16-312. Nondisclosure of information in exceptional circumstances.
§48-16-313. Costs and fees.
§48-16-314. Limited immunity of petitioner.
§48-16-315. Nonparentage as defense.
§48-16-316. Special rules of evidence and procedure.
§48-16-317. Communications between tribunals.
§48-16-318. Assistance with discovery.
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§48-16-401. Petition to establish support order.
§48-16-501. Employer’s receipt of income-withholding order of another state.
§48-16-502. Employer’s compliance with income-withholding order of another state.
§48-16-503. Compliance with multiple income withholding orders.
§48-16-504. Immunity from civil liability.
§48-16-505. Penalties for noncompliance.
§48-16-506. Contest by obligor.
§48-16-507. Administrative enforcement of orders.
§48-16-601. Registration of order for enforcement.
§48-16-602. Procedure to register order for enforcement.
§48-16-603. Effect of registration for enforcement.
§48-16-604. Choice of law.
§48-16-605. Notice of registration of order.
§48-16-606. Procedure to contest validity or enforcement of registered order.
§48-16-607. Contest of registration or enforcement.
§48-16-608. Confirmed order.
§48-16-609. Procedure to register child support order of another state for modification.
§48-16-610. Effect of registration for modification.
§48-16-611. Modification of child support order of another state.
§48-16-612. Recognition of order modified in another state.
§48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.
§48-16-614. Notice to issuing tribunal of modification.
§48-16-701. Proceeding to determine parentage.
§48-16-801. Grounds for rendition.
§48-16-802. Conditions of rendition.
§48-16-901. Uniformity of application and construction.
§48-16-902. Short title.
§48-16-903. Effective date.

PART 1. GENERAL PROVISIONS.


1 As used in this article:

2 (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

3 (2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

4 (3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.
(4) "Home state" means the state in which a child lived
with a parent or a person acting as parent for at least six
consecutive months immediately preceding the time of filing of
a petition or comparable pleading for support and, if a child is
less than six months old, the state in which the child lived from
birth with any of them. A period of temporary absence of any
of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic
entitlements to money from any source and any other property
subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other
legal process directed to an obligor's source of income as
defined by section 1-240 of this chapter to withhold support
from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding
is forwarded or in which a proceeding is filed for forwarding to
a responding state under this article or a law or procedure
substantially similar to this article, the uniform reciprocal
enforcement of support act, or the revised uniform reciprocal
enforcement of support act.

(8) "Initiating tribunal" means the authorized tribunal in an
initiating state.

(9) "Issuing state" means the state in which a tribunal issues
a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a
support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules
having the force of law.
“(12) “Obligee” means: (i) An individual to whom a duty of
support is or is alleged to be owed or in whose favor a support
order has been issued or a judgment determining parentage has
been rendered; (ii) a state or political subdivision to which the
rights under a duty of support or support order have been
assigned or which has independent claims based on financial
assistance provided to an individual obligee; or (iii) an individ-
ual seeking a judgment determining parentage of the individ-
ual’s child.

(13) “Obligor” means an individual, or the estate of a
decedent: (i) Who owes or is alleged to owe a duty of support;
(ii) who is alleged but has not been adjudicated to be a parent
of a child; or (iii) who is liable under a support order.

(14) “Register” means to record a support order or judg-
ment determining parentage in the registry of foreign support
orders.

(15) “Registering tribunal” means a tribunal in which a
support order is registered.

(16) “Responding state” means a state in which a proceed-
ing is filed or to which a proceeding is forwarded for filing
from an initiating state under this article or a law or procedure
substantially similar to this article, the uniform reciprocal
enforcement of support act, or the revised uniform reciprocal
enforcement of support act.

(17) “Responding tribunal” means the authorized tribunal
in a responding state.

(18) “Spousal-support order” means a support order for a
spouse or former spouse of the obligor.

(19) “State” means a state of the United States, the District
of Columbia, Puerto Rico, the United States Virgin Islands or
any territory or insular possession subject to the jurisdiction of
the United States. The term includes: (i) An Indian tribe; (ii) a
foreign jurisdiction that has enacted a law or established
procedures for issuance and enforcement of support orders
which are substantially similar to the procedures under this
article, the uniform reciprocal enforcement of support act, or
the revised uniform reciprocal enforcement of support act.

(20) "Support enforcement agency" means a public official
or agency authorized to seek: (i) Enforcement of support orders
or laws relating to the duty of support; (ii) establishment or
modification of child support; (iii) determination of parentage;
or (iv) to locate obligors or their assets.

(21) "Support order" means a judgment, decree or order,
whether temporary, final or subject to modification, for the
benefit of a child, a spouse or a former spouse, which provides
for monetary support, health care, arrearages, or reimbursement
and may include related costs and fees, interest, income
withholding, attorney's fees and other relief.

(22) "Tribunal" means a court, administrative agency,
family law master or quasi-judicial entity authorized to estab-
lish, enforce or modify support orders or to determine parent-
age.

§48-16-102. Tribunals of state.

The circuit court and the family law masters are the
tribunals of this state.

§48-16-103. Remedies cumulative.

Remedies provided by this article are cumulative and do not
affect the availability of remedies under other law.

PART 2. JURISDICTION.
§48-16-201. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual’s guardian or conservator if: (1) The individual is personally served with notice within this state; (2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; (3) the individual resided with the child in this state; (4) the individual resided in this state and provided prenatal expenses or support for the child; (5) the child resides in this state as a result of the acts or directives of the individual; (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; (7) the individual has committed a tortious act by failing to support a child resident in this state; or (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.


A tribunal of this state exercising personal jurisdiction over a nonresident under section 16-201 may apply section 16-316 (Special Rules of Evidence and Procedure) to receive evidence from another state, and section 16-318 (Assistance with Discovery) to obtain discovery through a tribunal of another state. In all other respects, parts 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this article.

§48-16-203. Initiating and responding tribunal of state.
Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§48-16-204. Simultaneous proceedings in another state.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if: (1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state; (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if: (1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state; (2) the contesting party timely challenges the exercise of jurisdiction in this state; and (3) if relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction.

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order: (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or (2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.
(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this article or a law substantially similar to this article.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to this article or a law substantially similar to this article, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only: (1) Enforce the order that was modified as to amounts accruing before the modification; (2) enforce nonmodifiable aspects of that order; and (3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this article.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

§48-16-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.
(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 16-316 (Special Rules of Evidence and Procedure) to receive evidence from another state and section 16-318 (Assistance with Discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

§48-16-207. Recognition of controlling child support order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal is controlling and must be recognized.
(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued is controlling and must be recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state having jurisdiction over the parties must issue a child support order, which is controlling and must be recognized.

c If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (b). The request must be accompanied by a certified copy of every support order in effect. Every party whose rights may be affected by a determination of the controlling order must be given notice of the request for that determination.

d The tribunal that issued the order that must be recognized as controlling under subsection (a), (b) or (c) is the tribunal that has continuing, exclusive jurisdiction in accordance with section 16-205.

e A tribunal of this state which determines by order the identity of the controlling child support order under subsection (b) (1) or (b) (2) or which issued a new controlling child support order under subsection (b) (3) shall include in that order the basis upon which the tribunal made its determination.

(f) Within thirty days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. Failure of
the party obtaining the order to file a certified copy as required
subjects that party to appropriate sanctions by a tribunal in
which the issue of failure to file arises, but that failure has no
effect on the validity or enforceability of the controlling order.

§48-16-208. Multiple child support orders for two or more obli-
gees.

1 In responding to multiple registrations or petitions for
2 enforcement of two or more child support orders in effect at the
3 same time with regard to the same obligor and different
4 individual obligees, at least one of which was issued by a
5 tribunal of another state, a tribunal of this state shall enforce
6 those orders in the same manner as if the multiple orders had
7 been issued by a tribunal of this state.

§48-16-209. Credit for payments.

1 Amounts collected and credited for a particular period
2 pursuant to a support order issued by a tribunal of another state
3 must be credited against the amounts accruing or accrued for
4 the same period under a support order issued by the tribunal of
5 this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceedings under article.

1 (a) Except as otherwise provided in this article, this part 3
2 applies to all proceedings under this article.
3 (b) This article provides for the following proceedings: (1)
4 Establishment of an order for spousal support or child support;
5 (2) enforcement of a support order and income-withholding
6 order of another state without registration; (3) registration of an
7 order for spousal support or child support of another state for
8 enforcement; (4) modification of an order for child support or
spousal support issued by a tribunal of this state; (5) registration of an order for child support of another state for modification; (6) determination of parentage; and (7) assertion of jurisdiction over nonresidents.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.


A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§48-16-303. Application of law of state.

Except as otherwise provided by this article, a responding tribunal of this state: (1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§48-16-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents: (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or (2) if the identity of the responding tribunal is unknown, to the state information agency of the
responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this article or a law or procedure substantially similar to this article, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

§48-16-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (c), section 16-301 (proceedings under this article), the clerk of the court shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following: (1) Issue or enforce a support order, modify a child support order or render a judgment to determine parentage; (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance; (3) order income withholding; (4) determine the amount of any arrearages and specify a method of payment; (5) enforce orders by civil or criminal contempt, or both; (6) set aside property for satisfaction of the support order; (7) place liens and order execution on the obligor’s property; (8) order an obligor to keep the tribunal informed of the obligor’s current residential address, telephone number, employer, address of employment and telephone number at the place of employment; (9) issue a capias for an obligor who has failed after proper notice to appear at a hearing
ordered by the tribunal and enter the capias in any local and
state computer systems for criminal warrants; (10) order the
obligor to seek appropriate employment by specified methods;
(11) award reasonable attorney’s fees and other fees and costs;
and (12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a
support order issued under this article, or in the documents
accompanying the order, the calculations on which the support
order is based.

(d) A responding tribunal of this state may not condition the
payment of a support order issued under this article upon
compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order
under this article, the tribunal shall send a copy of the order to
the petitioner and the respondent and to the initiating tribunal,
if any.

§48-16-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an
inappropriate tribunal of this state, the clerk of the court shall
forward the pleading and accompanying documents to an
appropriate tribunal in this state or another state and notify the
petitioner where and when the pleading was sent.

§48-16-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon
request, shall provide services to a petitioner in a proceeding
under this article.

(b) A support enforcement agency that is providing services
to the petitioner as appropriate shall: (1) Take all steps neces-
ary to enable an appropriate tribunal in this state or another
state to obtain jurisdiction over the respondent; (2) request an
appropriate tribunal to set a date, time, and place for a hearing;
(3) make a reasonable effort to obtain all relevant information,
including information as to income and property of the parties;
(4) within two days, exclusive of Saturdays, Sundays and legal
holidays, after receipt of a written notice from an initiating,
responding, or registering tribunal, send a copy of the notice to
the petitioner; (5) within two days, exclusive of Saturdays,
Sundays and legal holidays, after receipt of a written communi-
cation from the respondent or the respondent’s attorney, send
a copy of the communication to the petitioner; and (6) notify
the petitioner if jurisdiction over the respondent cannot be
obtained.

(c) This article does not create or negate a relationship of
attorney and client or other fiduciary relationship between a
support enforcement agency or the attorney for the agency and
the individual being assisted by the agency.

§48-16-308. Duty of West Virginia support enforcement commis-
sion.

If the West Virginia support enforcement commission
determines that the support enforcement agency is neglecting
or refusing to provide services to an individual, the commission
may order the agency to perform its duties under this article or
may provide those services directly to the individual.

§48-16-309. Private counsel.

An individual may employ private counsel to represent the
individual in proceedings authorized by this article.

§48-16-310. Duties of state information agency.

(a) The bureau for child support enforcement is the state
information agency under this article.
(b) The state information agency shall: (1) Compile and
maintain a current list, including addresses, of the tribunals in
this state which have jurisdiction under this article and any
support enforcement agencies in this state and transmit a copy
to the state information agency of every other state; (2) main-
tain a register of tribunals and support enforcement agencies
received from other states; (3) forward to the appropriate
tribunal in the place in this state in which the individual obligee
or the obligor resides, or in which the obligor’s property is
believed to be located, all documents concerning a proceeding
under this article received from an initiating tribunal or the state
information agency of the initiating state; and (4) obtain
information concerning the location of the obligor and the
obligor’s property within this state not exempt from execution,
by such means as postal verification and federal or state locator
services, examination of telephone directories, requests for the
obligor’s address from employers, and examination of govern-
mental records, including, to the extent not prohibited by other
law, those relating to real property, vital statistics, law enforce-
ment, taxation, motor vehicles, driver’s licenses and social
security.

§48-16-311. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support
order or to determine parentage in a proceeding under this
article must verify the petition. Unless otherwise ordered under
section 16-312 (Nondisclosure of Information in Exceptional
Circumstances), the petition or accompanying documents must
provide, so far as known, the name, residential address and
social security numbers of the obligor and the obligee, and the
name, sex, residential address, social security number and date
of birth of each child for whom support is sought. The petition
must be accompanied by a certified copy of any support order
in effect. The petition may include any other information that
may assist in locating or identifying the respondent.
13 (b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

1 Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this article.

§48-16-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing fee or other costs.

3 (b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney’s fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

14 (c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 16-601, et seq.,(Enforcement and Modification of Support Order
After Registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§48-16-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while present in this state to participate in the proceeding.

§48-16-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under
the hearsay rule if given in person, is admissible in evidence if
given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified
as a true copy of the original by the custodian of the record may
be forwarded to a responding tribunal. The copy is evidence of
facts asserted in it, and is admissible to show whether payments
were made.

(d) Copies of bills for testing for parentage, and for prenatal
and postnatal health care of the mother and child, furnished to
the adverse party at least ten days before trial, are admissible in
evidence to prove the amount of the charges billed and that the
charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from another state
to a tribunal of this state by telephone, telecopier or other
means that do not provide an original writing may not be
excluded from evidence on an objection based on the means of
transmission.

(f) In a proceeding under this article, a tribunal of this state
may permit a party or witness residing in another state to be
deposed or to testify by telephone, audiovisual means or other
electronic means at a designated tribunal or other location in
that state. A tribunal of this state shall cooperate with tribunals
of other states in designating an appropriate location for the
deposition or testimony. The supreme court of appeals shall
promulgate new rules or amend the rules of practice and
procedure for family law to establish procedures pertaining to
the exercise of cross examination in those instances involving
the receipt of testimony by means other than direct or personal
testimony.

(g) If a party called to testify at a civil hearing refuses to
answer on the ground that the testimony may be self-incriminat-
ing, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.

§48-16-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

§48-16-318. Assistance with discovery.

A tribunal of this state may: (1) Request a tribunal of another state to assist in obtaining discovery; and (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§48-16-319. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.
PART 4. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

(a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state may issue a support order if: (1) The individual seeking the order resides in another state; or (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if: (1) The respondent has signed a verified statement acknowledging parentage; (2) the respondent has been determined by or pursuant to law to be the parent; or (3) there is other clear and convincing evidence that the respondent is the child’s parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 16-305 (Duties and Powers of Responding Tribunal).

PART 5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION.

§48-16-501. Employer’s receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor’s source of income under section 1-241 of this chapter without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§48-16-502. Employer’s compliance with income-withholding order of another state.
(a) Upon receipt of the order, the obligor’s employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as provided by subsection (d) and section 16-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

1. The duration and the amount of periodic payments of current child support, stated as a sum certain;
2. The person or agency designated to receive payments and the address to which the payments are to be forwarded;
3. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor’s employment;
4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee’s attorney, stated as sums certain; and
5. The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(d) The employer shall comply with the law of the state of the obligor’s principal place of employment for withholding from income with respect to:

1. The employer’s fee for processing an income withholding order;
(2) The maximum amount permitted to be withheld from
the obligor’s income;

(3) The time periods within which the employer must
implement the withholding order and forward the child support
payment.

§48-16-503. Compliance with multiple income withholding or-
ders.

If the obligor’s employer receives multiple orders to
withhold support from the earnings of the same obligor, the
employer shall be deemed to have satisfied the terms of the
multiple orders if the law of the state of the obligor’s principal
place of employment to establish the priorities for withholding
and allocating income withheld for multiple child support
obligees is complied with.

§48-16-504. Immunity from civil liability.

An employer who complies with an income-withholding
order issued in another state in accordance with this article is
not subject to civil liability to any individual or agency with
regard to the employer’s withholding child support from the
obligor’s income.

§48-16-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income-
withholding order issued by another state and received for
enforcement is subject to the same penalties that may be
imposed for noncompliance with an order issued by a tribunal
of this state.

§48-16-506. Contest by obligor.
(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 604 (Choice of Law) applies to the contest.

(b) The obligor shall give notice of the contest to:

1. A support enforcement agency providing services to the obligee;
2. Each employer which has directly received an income-withholding order; and
3. The person or agency designated to receive payments in the income-withholding order; or if no person or agency is designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article.

PART 6. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION.
§48-16-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

§48-16-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the state information agency who shall forward the order to the appropriate tribunal: (1) A letter of transmittal to the tribunal requesting registration and enforcement; (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order; (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage; (4) the name of the obligor and, if known: (i) The obligor's address and social security number; (ii) the name and address of the obligor's employer and any other source of income of the obligor; and (iii) a description and the location of property of the obligor in this state not exempt from execution; and (5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the clerk of the court shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.
§48-16-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

§48-16-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party: (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state; (2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after
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notice; (3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and (4) of the amount of any alleged arrearages.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's source of income pursuant to part 14-401 et seq. of this chapter.

§48-16-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 16-607 (Contest of Registration or Enforcement).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the
burden of proving one or more of the following defenses: (1) The issuing tribunal lacked personal jurisdiction over the contesting party; (2) the order was obtained by fraud; (3) the order has been vacated, suspended or modified by a later order; (4) the issuing tribunal has stayed the order pending appeal; (5) there is a defense under the law of this state to the remedy sought; (6) full or partial payment has been made; or (7) the statute of limitation under section 16-604 (Choice of Law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

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.

§48-16-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Part 1 if the order has not been registered. A petition for modification may be filed at the same time as a
request for registration, or later. The pleading must specify the 
grounds for modification.

§48-16-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of 
another state registered for purposes of modification, in the 
same manner as if the order had been issued by a tribunal of 
this state, but the registered order may be modified only if the 
requirements of section 16-611 (Modification of Child Support 
Order of Another State) have been met.

§48-16-611. Modification of child support order of another state.

(a) After a child support order issued in another state has 
been registered in this state, the responding tribunal of this state 
may modify that order only if section 16-613 does not apply 
and after notice and hearing it finds that: (1) The following 
requirements are met: (i) The child, the individual obligee, and 
the obligor do not reside in the issuing state; (ii) a petitioner 
who is a nonresident of this state seeks modification; and (iii) 
the respondent is subject to the personal jurisdiction of the 
tribunal of this state; or (2) the child or a party who is an 
individual, is subject to the personal jurisdiction of the tribunal 
of this state and all of the parties who are individuals have filed 
written consents in the issuing tribunal for a tribunal of this 
state to modify the support order and assume continuing, 
exclusive jurisdiction over the order. However, if the issuing 
state is a foreign jurisdiction that has not enacted a law or 
established procedures substantially similar to the procedures 
under this article, the consent otherwise required of an individual residing in this state is not required for the tribunal to 
assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is 
subject to the same requirements, procedures, and defenses that 
apply to the modification of an order issued by a tribunal of this
(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 16-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this article or a law substantially similar to this article and, upon request, except as otherwise provided in this article, shall: (1) Enforce the order that was modified only as to amounts accruing before the modification; (2) enforce only nonmodifiable aspects of that order; (3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and (4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

§48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.

(a) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.
(b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of parts 1 and 2 and this part 6 to the enforcement or modification proceeding. Parts 3 through 5, and Parts 7 and 8 do not apply and the tribunal shall apply the procedural and substantive law of this state.

§48-16-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

PART 7. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this article or a law substantially similar to this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply article 24-101, et seq., of this chapter and the rules of this state on choice of law.
§48-16-801. Grounds for rendition.

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The governor of this state may: (1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or (2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§48-16-802. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this article or that the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state
13 with having failed to provide for the support of a child or other
14 individual to whom a duty of support is owed, the governor
15 may require a prosecutor to investigate the demand and report
16 whether a proceeding for support has been initiated or would be
17 effective. If it appears that a proceeding would be effective but
18 has not been initiated, the governor may delay honoring the
19 demand for a reasonable time to permit the initiation of a
20 proceeding.

21 (c) If a proceeding for support has been initiated and the
22 individual whose rendition is demanded prevails, the governor
23 may decline to honor the demand. If the petitioner prevails and
24 the individual whose rendition is demanded is subject to a
25 support order, the governor may decline to honor the demand
26 if the individual is complying with the support order.

PART 9. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate its
2 general purpose to make uniform the law with respect to the
3 subject of this article among states enacting it.

§48-16-902. Short title.

1 This article may be cited as the “Uniform Interstate Family
2 Support Act.”

§48-16-903. Effective date.

1 The provisions of this article take effect on the first day of
2 January, one thousand nine hundred ninety-eight.

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMIS-
§48-17-101. Creation of support enforcement commission; number of members.

The West Virginia support enforcement commission, consisting of nine members, is hereby created in the department of health and human resources and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the department of health and human resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter and all other powers necessary and proper to establish policies and procedures for fully and effectively carrying out the purposes of administering, regulating, overseeing and enforcing the provisions of this chapter which relate to the establishment and enforcement of support obligations.

The commission is a part-time commission whose members make policy and have such other powers and perform such other duties as specified in this chapter or set forth in legislative rules promulgated by the commission. The ministerial duties of the commission shall be administered and carried out by the commissioner of the bureau for child support enforcement, with the assistance of such staff of the department of health and human resources as the secretary may assign.
Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the six members appointed by the governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the commissioner are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b of this code.

§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.

(a) Of the nine members of the commission, three shall be members by virtue of the public offices which they hold, and the remaining six members are to be appointed by the governor. No more than five members of the commission may belong to the same political party:

(1) One member is to be the secretary of the department of health and human resources;

(2) One member is to be the secretary of the department of tax and revenue;

(3) One member is to be the secretary of the department of administration;

(4) One member is to be a lawyer licensed by, and in good standing with, the West Virginia state bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(5) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;
(6) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

(7) One member is to be a person selected from a list of nominees submitted by the West Virginia judicial association: Provided, That the list of nominees shall not include any person currently exercising the powers of the judicial department; and

(8) Two members are to be representatives of the public at large.

(b) Each member of the commission is to be a citizen of the United States, a resident of the state of West Virginia and at least twenty-one years of age.

§48-17-103. Terms of commission members; conditions of membership.

(a) The term of office for each member of the commission who serves as a member by virtue of the public office held is for a period concurrent with that person's tenure in the office. The term of office for each member of the commission appointed by the governor is four years, except that for an initial period, the terms of office of the initial six commission members appointed by the governor commence from an initial date of appointment not later than the first day of July, one thousand nine hundred ninety-five, and run as follows:

(1) Two members shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred ninety-seven;

(2) Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-eight; and
(3) Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-nine.

(b) After the initial appointments made pursuant to the provisions of subdivisions (1), (2) and (3), subsection (a) of this section, members appointed by the governor shall thereafter be appointed or reappointed for terms of office which end on the thirtieth day of June in the fourth year following the expiration date of the previous term or terms.

(c) Appointments to fill vacancies on the commission are for the unexpired term of the member replaced.

(d) At the expiration of a member’s term, the member shall continue to serve until a successor is appointed and qualified.

§48-17-104. Oath.

Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia.

§48-17-105. Commission chairman.

In making the initial appointments to the commission, the governor shall designate a member to serve as chairman for a term ending on the thirtieth day of June, one thousand nine hundred ninety-six. The member so designated shall serve in such capacity until his or her successor as chairman is elected by the commission as hereinafter provided.

Following the term of the initial chairman, thereafter the chairman shall be elected by the commission from among its members, and the member so elected shall: (1) Serve as chairman for a term of two years and until his or her successor
shall have been elected; or (2) shall serve in such capacity
throughout his or her service as a member of the commission,
whichever period is shorter. In the event that a successor
chairman is not elected by the commission members within
ninety calendar days after the expiration of a chairman’s term,
a vacancy shall be deemed to exist, and the governor shall
designate a chairman from among the members of the commis-
sion. A member may not serve more than two consecutive
terms as chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

(a) Each member of the commission shall receive one
hundred dollars for each day or portion thereof spent in the
discharge of his or her official duties.

(b) Each member of the commission shall be reimbursed for
all actual and necessary expenses and disbursements involved
in the execution of official duties.

§48-17-107. Meeting requirements.

(a) The commission shall meet within the state at least once
per calendar quarter and at such other times as the chairman
may decide. The commission shall also meet upon a call of five
or more members upon seventy-two hours written notice to
each member.

(b) Five members of the commission are a quorum for the
transaction of any business and for the performance of any
duty.

(c) A majority vote of the members present is required for
any final determination by the commission.
(d) The commission may elect to meet in executive session after an affirmative vote of a majority of its members present according to section four, article nine-a, chapter six of this code.

(e) The commission shall keep a complete and accurate record of all its meetings according to section five, article nine-a, chapter six of this code.

§48-17-108. Removal of commission members.

Notwithstanding the provisions of section four, article six, chapter six of this code, the governor may remove any commission member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

§48-17-109. General duties of support enforcement commission.

The support enforcement commission shall have general responsibility for establishing policies and procedures for obtaining and enforcing support orders and establishing paternity according to this chapter, as hereinafter provided, including, without limitation, the responsibility for the following:

(a) To propose for promulgation, according to the provisions of chapter twenty-nine-a of this code, such legislative rules as in its judgment may be necessary to fulfill the policies of this chapter;

(b) To undertake directly, or by contract, legal or policy research related to obtaining and enforcing support orders and establishing paternity;

(c) To serve as a clearinghouse for information;
(d) To keep a record of all commission proceedings available for public inspection;

(e) To file a written annual report to the governor, the president of the Senate and the speaker of the House of Delegates on or before the thirtieth day of January of each year, and such additional reports as the governor or Legislature may request.

§48-17-110. General powers of support enforcement commission.

In establishing policies and procedures for enforcing the provisions of this chapter, the commission shall have the following power and authority:

(1) To establish and maintain procedures under which expedited processes, administrative or judicial, are in effect for obtaining and enforcing support orders and establishing paternity according to this chapter;

(2) To monitor the child support enforcement system of this state and from time to time to advise the bureau for child support enforcement and other agencies of the state of West Virginia regarding the establishment and enforcement of child support orders;

(3) To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a of this code as are required by this chapter: Provided, That all rules which are in effect at the time of the implementation of this section shall continue in full force and effect until the commission promulgates a rule or rules regarding the same subject matter;

(4) To promulgate legislative rules pursuant to chapter twenty-nine-a of this code relating to the structure of the bureau for child support enforcement, including, but not limited to, the designation of administrative and legal tasks and the location of
23 offices for the bureau throughout the state. This rule shall
24 constitute an emergency rule within the meaning of section
25 fifteen, article three, chapter twenty-nine-a of this code;

26 (5) To adopt standards for staffing, recordkeeping, report-
27 ing, intergovernmental cooperation, training, physical structures
28 and time frames for case processing;

29 (6) To review the state plan for child and spousal support to
determine its conformance or nonconformance with the
provisions of 42 U.S.C. §654, and make recommendations or to
promulgate legislative rules based upon such review;

33 (7) To cooperate with judicial organizations and the private
bar to provide training to persons involved in the establishment
and enforcement of child support orders;

36 (8) To study the issues involving retroactive and reimburse-
ment child support payments which are ordered following the
establishment of paternity and to make a recommendation to the
Legislature on or before the first day of December, one thou-
sand nine hundred ninety-five, regarding any statutory or
regulatory action which should be implemented to ensure that
fathers are not ordered to pay retroactive or reimbursement
child support or medical expenses when such payments would
be unconscionable or inequitable given the totality of the
circumstances arising from the facts of a given case; and

46 (9) To promulgate such further legislative rules pursuant to
chapter twenty-nine-a of this code which may aid the bureau for
child support enforcement in the establishment and enforcement
of child support orders. In addition to the specific designation
of such rules that constitute emergency rules within the
meaning of section fifteen, article three, chapter twenty-nine-a
of this code, the commission may promulgate other rules as
emergency rules when such rule is necessary to ensure that the
state is awarded federal funds for the actions described in the
rule or when the promulgation of such rule is necessary to
prevent substantial harm to the public interest by ensuring that
child support is timely collected and disbursed.

§48-17-111. Required rule making.

1 The commission shall, without limitation on the powers
carried in section 17-110 of this article, include within its
legislative rules the following specific provisions according to
the provisions of this chapter:

(1) Prescribing the methods and forms of proposal that a
prospective contractor shall follow and complete before
consideration of a proposal by the commission, which rules
shall require such plans as shall assure the commission that the
proposal conforms with the requirements of this chapter and all
applicable federal statutes and regulations;

(2) Prescribing standards and guidelines for contractors
providing professional services to ensure the maintenance of the
highest quality of service and professional standards, the
preservation of the attorney-client relationship, and the protec-
tion of the integrity of the adversarial process from any impair-
ment in furnishing legal representation;

(3) Requiring the bureau, and any contractors providing
professional services or collection services to the bureau, to
adopt procedures for the provision of such services which will
best advance the needs and interests of the obligees and
dependents who seek assistance in obtaining and enforcing
support orders and establishing paternity according to this
chapter, without regard to whether such procedures optimize or
maximize the profits derived by the contractor or result in the
payment of reimbursements or financial incentives to the
bureau;
(4) Prescribing standards and guidelines for contractors providing professional services to ensure that appropriate training and support services are provided to employees of the contractor who are engaged in activities to obtain and enforce support orders and establish paternity according to this chapter;

(5) Prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a contractor providing collection services, including provisions for the safeguarding of support payments, the recording of receipts and evidence of nonpayment by obligors, and the maintenance of reliable records, accounts and reports of transactions, operations and events, including reports to the commission;

(6) Providing for a minimum uniform standard of accounting methods, procedures and forms; a uniform code of accounts and accounting classifications; and other standard operating procedures, as may be necessary to assure consistency, comparability and effective disclosure of all financial information by a contractor providing collection services; and

(7) Requiring periodic financial reports and the form thereof, including an annual audit prepared by a certified public accountant licensed to do business in this state, attesting to the financial condition of a contractor providing collection services and disclosing whether the accounts, records and control procedures examined are maintained by the contractor as required by this chapter.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services; continuation.

§48-18-102. Appointment of commissioner; duties; compensation.

§48-18-103. Organization and employees.

§48-18-104. Supervisory responsibilities within the bureau for child support enforcement.
§48-18-105. General duties and powers of the bureau for child support enforcement.
§48-18-106. Notice to unemployed obligor.
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§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services; continuation.
(a) Effective the first day of July, one thousand nine hundred ninety-five, there is hereby established in the department of health and human resources the bureau for child support enforcement. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate with the bureau for child support enforcement. At a minimum, such cooperation shall require that the division of human services:

1. Notify the bureau for child support enforcement when the division of human services proposes to terminate or provide public assistance payable to any obligee;

2. Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

3. Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the bureau for child support enforcement.

(c) Pursuant to the provisions of article ten, chapter four of this code, the bureau for child support enforcement shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.

§48-18-102. Appointment of commissioner; duties; compensation.
(a) There is hereby created the position of commissioner whose duties include the ministerial management and administration of the office of the support enforcement commission. The commissioner shall:

(1) Be appointed by the secretary;

(2) Serve at the will and pleasure of the secretary;

(3) Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment, while serving as commissioner;

(4) Be a lawyer licensed by, and in good standing with, the West Virginia state bar; and

(5) Have responsible administrative experience, possess management skills, and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.

Before entering upon the discharge of the duties as commissioner, the commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia.

(b) The duties of the commissioner shall include the following:

(1) To direct and administer the daily operations of the commission;

(2) To administer the child support enforcement fund created pursuant to section 18-107 of this article;
(3) To keep the records and papers of the commission, including a record of each proceeding;

(4) To prepare, issue and submit reports of the commission;

and

(5) To perform any other duty that the commission directs.

(c) All payments to the commissioner as compensation shall be made from the child support enforcement fund. The commissioner is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

(2) Reimbursement for expenses under the standard state travel regulations.

§48-18-103. Organization and employees.

(a) The commissioner shall organize the work of the bureau in such offices or other organizational units as he or she may determine to be necessary for effective and efficient operation.

(b) The secretary may transfer employees and resources of the department to the bureau for child support enforcement as may be necessary to fulfill the duties and responsibilities of the bureau under this chapter: Provided, That the secretary may not transfer employees of other divisions and agencies within the department to the bureau for child support enforcement without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated.

(c) The commissioner, if he or she deems such action necessary, may hire legal counsel for the division, notwith-
standing the provisions of 5-3-2 of this code or any other code provision to the contrary, or may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the bureau. The attorney general, in pursuance of such request, may select and appoint assistant attorneys general, to serve during the will and pleasure of the attorney general, and such assistants shall be paid out of any funds allocated and appropriated to the child support enforcement fund.

(d) The commissioner may employ such staff or employees as may be necessary to administer and enforce this chapter.

§48-18-104. Supervisory responsibilities within the bureau for child support enforcement.

The commissioner shall have control and supervision of the bureau for child support enforcement and shall be responsible for the work of each of its organizational units. Each organizational unit shall be headed by an employee of the bureau appointed by the commissioner who shall be responsible to the commissioner for the work of his or her organizational unit.

*§48-18-105. General duties and powers of the bureau for child support enforcement.

In carrying out the policies and procedures for enforcing the provisions of this chapter, the bureau shall have the following power and authority:

(i) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;

(2) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(3) To undertake directly, or by contract, activities to collect and disburse support payments;

(4) To contract for professional services with any person, firm, partnership, professional corporation, association or other legal entity to provide representation for the bureau and the state in administrative or judicial proceedings brought to obtain and enforce support orders and establish paternity;

(5) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as promulgated by the supreme court of appeals;

(6) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(7) To ensure the compliance of contractors and their employees with the provisions of this chapter and legislative rules promulgated pursuant to this chapter, and to terminate, after notice and hearing, the contractual relationship between the bureau and a contractor who fails to comply;

(8) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(9) To locate parents who owe a duty to pay child support;

(10) To cooperate with other agencies of this state and other states to search their records to help locate absent parents;
(11) To cooperate with other states in establishing and enforcing support obligations;

(12) To exercise such other powers as may be necessary to effectuate the provisions of this chapter.

§48-18-106. Notice to unemployed obligor.

Upon receipt of a report from an employer stating that a support obligor has been discharged or laid off or has resigned or voluntarily quit, the bureau for child support enforcement shall send a notice to the obligor, informing the obligor of the availability of a modification of the support award and of the services that may be available to him or her from the bureau. The bureau shall also inform the obligor of his or her possible entitlement to a reduction in court-ordered support payments; that a failure to obtain a modification will result in the previously-ordered award remaining in effect; and that substantial arrearage might accumulate and remain as judgments against him or her.

§48-18-107. Creation of child support enforcement fund; purpose; funding; disbursements.

(a) There is hereby created in the state treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "child support enforcement fund". The special revenue account shall consist of all incentive payments paid by the federal government pursuant to 42 U.S.C. §658 as a percentage of the total amount of support collected directly or by contract by the bureau for child support enforcement, all amounts appropriated by the Legislature to maintain and operate the bureau for child support enforcement according to this chapter, and all interest or other earnings from moneys in the fund. Any agency or entity receiving federal matching
funds for services of the bureau for child support enforcement shall enter into an agreement with the secretary whereby all federal matching funds paid to and received by that agency or entity for the activities of the bureau for child support enforcement shall be paid into the child support enforcement fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds, pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations. No expenses incurred under this section shall be a charge against the general funds of the state.

(b) Moneys in the special revenue account shall be appropriated to the department and used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses incurred, or to be incurred for the following purpose: The provision of child support services authorized pursuant to Title IV, Part D of the Social Security Act and any further duty as set forth in this chapter, including, but not limited to, the duties assigned to the bureau by virtue of its being designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support.

(c) Any balance remaining in the special revenue account at the end of any state fiscal year shall not revert to the general revenue fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section: Provided, That for the three succeeding fiscal years after the effective date of this section, any appropriation made to the special revenue account from general revenue shall be repaid to the general revenue fund from moneys available in the special revenue account.

(d) Disbursements from the special revenue account shall be authorized by the commissioner.

(a) When the bureau for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the bureau for child support enforcement shall, upon written notice to the obligor, charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to the amount of child support which was ordered by the court. The fee shall be deposited in the child support enforcement fund. The service fee assessed may not exceed ten percent of the monthly court ordered child support and may not be assessed against any obligor who is current in payment of the monthly court ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the bureau for child support enforcement who are applying for or receiving public assistance from the division of human services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of twenty-five dollars.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee the bureau for child support enforcement shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the child support enforcement fund established pursuant to section 18-107.
32  (d) In any action brought by the bureau for child support
33  enforcement, the family law master shall order that the obligor
34  shall pay attorney fees for the services of the attorney represent-
35  ing the bureau for child support enforcement in an amount
36  calculated at a rate similar to the rate paid to court appointed
37  attorneys paid pursuant to section thirteen-a, article twenty-one,
38  chapter twenty-nine of this code, and all court costs associated
39  with the action: Provided, That no such award shall be made
40  when the family law master or circuit judge finds that the award
41  of attorney’s fees would create a substantial financial hardship
42  on the obligor or when the obligor is a recipient of public
43  assistance. Further, the bureau for child support enforcement
44  may not collect such fees until the obligor is current in the
45  payment of child support. No court may order the bureau for
46  child support enforcement to pay attorney’s fees to any party in
47  any action brought pursuant to this chapter.

48  (e) This section shall not apply to the extent it is inconsis-
49  tent with the requirements of federal law for receiving funds for
50  the program under Title IV-A and Title IV-D of the Social
51  Security Act, United States Code, article three, Title 42,
52  Sections 601 et seq. and United States Code, Title 42, Sections
53  651 et seq.

54  (f) The commission shall, by legislative rule promulgated
55  pursuant to chapter twenty-nine-a of this code, describe the
56  circumstances under which fees charged by the bureau for child
57  support enforcement may be modified or waived, and such rule
58  shall provide for the waiver of any fee, in whole or in part,
59  when such fee would otherwise be required to be paid under the
60  provisions of this chapter. Further, such rule shall initially be
61  promulgated as an emergency rule pursuant to section fifteen,
62  article three, chapter twenty-nine-a of this code.

(a) Contracts with persons, firms, partnerships, corporations, associations or other legal entities to provide services to the bureau for child support enforcement shall, at a minimum:

(1) Provide for the employment and training of personnel necessary to perform the services;

(2) Provide that any federal incentive payment that is payable shall be payable to the fund established pursuant to section 18-107;

(3) Delegate responsibility that is consistent with the rules promulgated pursuant to this article;

(4) Include any and all provisions required by state or federal law and specifically include terms regarding cancellation and renewal of the contract;

(5) Provide for the assessment of penalties for the failure to fully or timely provide services included in the agreement;

(6) Prohibit the assignment of the contract or the subcontracting of services to be provided under the contract without first obtaining the express written approval of the commissioner;

(7) Provide that the contractor consents to performance audits of its operations by the performance evaluation and research division, legislative auditor’s office of the West Virginia Legislature; and

(8) Establish reasonable administrative and fiscal requirements for providing and continuing services and reimbursement.
(b) Prior to entering into such agreement, the commissioner shall provide all proposals to the members of the commission who may review and comment on those proposals.

(c) The commissioner shall enter into such agreement only when the commissioner finds that based upon the information provided to the commissioner and upon the comments made by members of the commission, that the provider of services is capable of carrying out the responsibilities of the agreement.

(d) All contracts entered into pursuant to this section shall meet all requirements for such agreements as detailed in article three, chapter five-a of this code: Provided, That when the commission, after reviewing any contract, finds that the contract meets all requirements as set forth in this section and further that the bureau for child support enforcement should enter into such contract, the contract shall not be subject to the requirements as detailed in article three, chapter five-a of this code.

(e) Any agreement entered into pursuant to this section may include a provision relating to the loan of equipment in the possession of the bureau for child support enforcement.


(a) Attorneys employed by the bureau for child support enforcement may represent this state or another state in an action brought under the authority of federal law of this chapter.

(b) An attorney employed by the bureau for child support enforcement or employed by a person or agency or entity pursuant to a contract with the bureau for child support enforcement represents the interest of the state or the bureau and not the interest of any other party. The bureau for child support enforcement shall, at the time an application for child support services is made, inform the applicant that any attorney who
provides services for the bureau for child support enforcement
is the attorney for the state of West Virginia and that the
attorney providing those services does not provide legal
representation to the applicant.

(c) An attorney employed by the bureau for child support
enforcement or pursuant to a contract with the bureau for child
support enforcement may not be appointed or act as a guardian
ad litem or attorney ad litem for a child or another party.

§48-18-111. Establishment of parent locator service.

(a) The bureau for child support enforcement shall establish
a parent locator service to locate individuals for the purposes of
establishing parentage and of establishing, modifying or
enforcing child support obligations, utilizing all sources of
information and available records and the parent locator service
in the federal department of health and human services. For
purposes of obtaining information from the parent locator
service, any person, agency or entity providing services to the
bureau for child support enforcement pursuant to a contract that
includes a provision to ensure that the confidentiality of
information is maintained shall be deemed to be an agent of the
bureau for child support enforcement.

(b) Upon entering into an agreement with the secretary of
the federal department of health and human services for the use
of that department’s parent locator service, the bureau for child
support enforcement shall accept and transmit to the secretary
of the federal department of health and human services requests
from authorized persons for information with regard to the
whereabouts of a noncustodial obligor to be furnished by such
federal parent locator service. For purposes of this subsection,
“authorized persons” means: (1) An attorney or agent of the
bureau for child support enforcement; (2) a family law master
or circuit judge or any agent thereof; or (3) a resident parent,
legal guardian, attorney or agent for a child. The bureau for
court support enforcement shall charge a reasonable fee
sufficient to cover the costs to the state and to the federal
department of health and human services incurred by reason of
such requests, and shall transfer to that department from time
to time, so much of the fees collected as are attributable to the
costs incurred by that department.

(c) The information obtained by the bureau for child
support enforcement from the federal parent locator service
shall be used for, but not limited to, the following purposes:

(1) Establishing parentage and establishing, setting the
amount of, modifying or enforcing child support obligations;

(2) Obtaining and transmitting information to any family
law master or circuit court or agent thereof or to an attorney or
employee of the United States or of any state responsible for
enforcing any federal or state law with respect to the unlawful
taking or restraint of a child or making or enforcing a child
custody or visitation determination.

(d) The bureau for child support enforcement may request
from the federal parent locator service information:

(1) About, or which will facilitate the discovery of informa-
tion about, the location of any individual: (A) Who is under an
obligation to pay child support; (B) against whom such an
obligation is sought; or (C) to whom such an obligation is
owed, including the individual’s social security number, or
numbers, most recent address, and the name, address and
employer identification number of the individual’s employer;

(2) Concerning the individual’s wages or other income
from, and benefits of, employment, including rights to or
enrollment in group health care coverage; and
(3) Concerning the type, status, location and amount of any assets of, or debts owed by or to, any such individual.

(e) A circuit court shall have jurisdiction to hear and determine, upon a petition by an authorized person, as defined in subsection (b) of this section, whether the release of information from the federal parent locator service to that person could be harmful to the custodial parent or the child.

§48-18-112. Cooperation with other states in the enforcement of child support.

(a) The bureau for child support enforcement shall cooperate with any other state in the following:

(1) In establishing paternity;

(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;

(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and

(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The commission shall, by legislative rule, establish procedures necessary to extend the bureau for child support enforcements' system of withholding under part 14-401, et seq., so that such system may include withholding from income
derived within this state in cases where the applicable support
orders were issued in other states, in order to assure that child
support owed by obligors in this state or any other state will be
collected without regard to the residence of the child for whom
the support is payable or the residence of such child’s custodial
parent.

§48-18-113. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the
bureau for child support enforcement 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 bureau for child support
enforcement 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.

(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.

(c) The commission shall establish bonding requirements
for employees of the bureau for child support enforcement who
receive, disburse, handle or have access to cash.

(d) The commissioner shall maintain methods of adminis-
tration which are designed to assure that employees of the
bureau for child support enforcement 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 commissioner 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 bureau for child support enforcement 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.

§48-18-114. 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) Where physical custody of the child has been transferred from the custodial parent to another person, the bureau for child support enforcement 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 bureau for child support enforcement:

(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 bureau for child support enforcement:

(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.

(b) The bureau for child support enforcement shall mail, by first class mail, a copy of the affidavit and supporting documentary evidence required under subsection (a) of this section, to the circuit court which issued the support order being enforced by bureau for child support enforcement 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 bureau for child support enforcement by the end of the ten-day period, the bureau 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 bureau for child support enforcement, 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 bureau for child
support enforcement shall continue to forward support pay-
ments to the custodial parent. Any person who disagrees with
the determination of the bureau for child support enforcement
may petition the circuit court for modification of the child
support order.

(c) 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.

§48-18-115. Payment of support to the bureau for child support
enforcement.

All support payments owed to an obligee who is an
applicant for or recipient of the services of the bureau for child
support enforcement shall be paid to the bureau for child
support enforcement. Any other obligee owed a duty of support
under the terms of a support order entered by a court of
competent jurisdiction may request that the support payments
be made to the bureau for child support enforcement. In such
case, the bureau for child support enforcement shall proceed to
receive and disburse such support payments to or on behalf of
the obligee as provided by law.

§48-18-116. Authorization for data processing and retrieval
system.
In accordance with an initial and annually updated advance data processing planning document approved by the secretary of the federal department of health and human services, the bureau for child support enforcement may establish an automatic data processing and retrieval system designed effectively and efficiently to assist the commissioner in carrying out the provisions of this chapter.

§48-18-117. Obtaining support from federal tax refunds.

The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, place in effect procedures necessary for the bureau for child support enforcement to obtain payment of past due support from federal tax refunds from overpayments made to the secretary of the treasury of the United States. The bureau for child support enforcement shall take all steps necessary to implement and utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

(a) The tax commissioner shall establish procedures necessary for the bureau for child support enforcement 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 bureau for child support enforcement 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.
Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the bureau for child support enforcement 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 bureau for child support enforcement may deduct a twenty-five dollar fee from the obligor’s state income tax refund. Such rule may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the bureau for children and families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the bureau for child support enforcement 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 bureau for child support enforcement shall consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the bureau for child support enforcement first agreed to enforce the support order.
(c) The commissioner of the bureau for child support enforcement 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 bureau for child support enforcement 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 bureau for child support enforcement of the obligor's home address and social security number or numbers. The bureau for child support enforcement 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 living, regardless of whether the amount has been reduced to a judgment or not.

(e) The bureau for child support enforcement 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:

(i) 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 bureau for child support enforcement 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 bureau for child support enforcement 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 health and human resources, the bureau for child support enforcement may delay distribution of the amount withheld until such time as the tax commissioner notifies the bureau for child support enforcement 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 bureau for child support enforcement, if the bureau for child support enforcement 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 bureau for child support enforcement 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.
§48-18-119. Obtaining support from unemployment compensation benefits.

(a) The commissioner shall determine on a periodic basis whether individuals receiving unemployment compensation owe child support obligations which are being enforced or have been requested to be enforced by the bureau for child support enforcement. If an individual is receiving such compensation and owes any such child support obligation which is not being met, the bureau for child support enforcement shall enter into an agreement with such individual to have specified amounts withheld otherwise payable to such individual, and shall submit a copy of such agreement to the bureau of employment programs. In the absence of such agreement, the bureau for child support enforcement shall bring legal process to require the withholding of amounts from such compensation.

(b) The secretary shall enter into a written agreement with the bureau of employment programs for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the bureau for child support enforcement. The bureau for child support enforcement shall agree only to a withholding program that it expects to be cost effective, and, as to reimbursement, shall agree only to reimburse the bureau of employment programs for its actual, incremental costs of providing services to the bureau for child support enforcement.

(c) The commission shall promulgate a procedural rule for selecting cases to pursue through the withholding of unemployment compensation for support purposes. This rule shall be designed to ensure maximum case selection and minimal discretion in the selection process.

(d) The commissioner shall, not less than annually, provide a receipt to an individual who requests a receipt for the support
(e) The commissioner shall, through direct contact with the bureau of employment programs, process cases through the bureau of employment programs in this state, and shall process cases through support enforcement agencies in other states. The commissioner shall receive all amounts withheld by the bureau of employment programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

(f) At least one time per year, the commission shall review and document program operations, including case selection criteria established under subsection (c) of this section, and the costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the bureau of employment programs to improve program and cost effectiveness.

(g) For the purposes of this section:

1. "Legal process" means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order to such court or pursuant to state or local law.

2. "Unemployment compensation" means any compensation under state unemployment compensation law (including amounts payable in accordance with agreements under any federal unemployment compensation law). It includes extended benefits, unemployment compensation for federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Federal Redwood National Park Expansion Act.
§48-18-120. Statements of account.

The bureau for child support enforcement shall provide annual statements of their account to each obligor and obligee without charge. Additional statements of account shall be provided at a fee of five dollars, unless such fee is waived pursuant to a rule promulgated by the commission. Statements provided under this subsection are in addition to statements provided for judicial hearings. The commissioner shall establish procedures whereby an obligor or obligee can contest or correct a statement of account.

§48-18-121. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

(a) For purposes of this section, the term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(b) The commission shall propose and adopt a procedural rule in accordance with the provisions of sections four and eight, article three, chapter twenty-nine-a of this code, establishing procedures whereby information regarding the amount of overdue support owed by an obligor will be reported periodically by the bureau for child support enforcement to any consumer reporting agency, after a request by the consumer reporting agency that it be provided with the periodic reports.

(1) The procedural rule adopted by the commission shall provide that any information with respect to an obligor shall be made available only after notice has been sent to the obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of the information.
20 (2) The procedural rule adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

23 (c) The information made available to a consumer reporting agency regarding overdue support may only be made available to an entity that has furnished evidence satisfactory to the bureau that the entity is a consumer reporting agency as defined in subsection (a) of this section.

28 (d) The bureau for child support enforcement may impose a fee for furnishing such information, not to exceed the actual cost thereof.

31 (e) The commissioner of the bureau for child support enforcement, or her or his designee, may request a consumer reporting agency to prepare and furnish to the bureau for child support enforcement a consumer report for purposes relating to child support, by certifying to the consumer reporting agency that:

37 (1) The consumer report is needed for the purpose of establishing an individual’s capacity to make child support payments or determining the appropriate level of such payments in order to set an initial or modified child support award;

41 (2) The paternity of the child of the individual has been established or acknowledged by the individual in accordance with state law;

44 (3) The individual whose report is being requested has been given at least ten days’ prior notice of such request by certified mail to his or her last known address that such report is being requested; and

48 (4) The consumer report will be kept confidential, will be used solely for a purpose described in subdivision (1) of this
subsection and will not be used in connection with any other civil, administrative or criminal proceeding or for any other purpose.

§48-18-122. Central state case registry.

(a) The bureau for child support enforcement shall establish and maintain a central state case registry of child support orders. All orders in cases when any party receives any service provided by the bureau for child support enforcement shall be included in the registry. Any other support order entered or modified in this state on or after the first day of October, one thousand nine hundred ninety-eight, shall be included in the registry. The bureau for child support enforcement, upon receipt of any information regarding a new hire provided pursuant to section 18-125 of this article shall compare information received to determine if the new hire's income is subject to wage withholding and notify the employer pursuant to that section.

(b) Each party to a child support proceeding shall, upon entry of an order awarding or modifying child support, complete and file with the clerk of the circuit court issuing the order a form, to be promulgated by the administrative office of the supreme court of appeals, listing information concerning the location and identity of a party including, but not limited to: The party's social security number, residential and mailing address, telephone number and driver's license number; the child's name, birth date and social security number; and the party's employer's name, address and telephone number. The clerk shall promptly forward all such information to the state case registry. The parties are required to notify the state case registry of any change in the information contained on the form, and every order for support shall so state. All information provided to the state case registry shall be subject to the privacy and confidentiality safeguards contained in section 18-131.
(c) In any subsequent child support enforcement action between the parties, there shall be a presumption that the requirements for notice and service of process have been met upon a showing that the bureau for child support enforcement has made a diligent effort to ascertain the location of a party by delivery of written notice by certified mail, return receipt requested, to the most recent employer or residential mailing address filed with the state case registry pursuant to subsection (b) of this section.

§48-18-123. Subpoenas.

In order to obtain financial and medical insurance or other information pursuant to the establishment, enforcement and modification provisions set forth in this chapter, the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor organization or state agency, for an appearance or for production of financial or medical insurance or other information. In case of disobedience to the subpoena, the bureau for child support enforcement may invoke the aid of any circuit court in requiring the appearance or production of records and financial documents. The bureau for child support enforcement may assess a civil penalty of no more than one hundred dollars for the failure of any person, corporation, financial institution, labor organization or state agency to comply with requirements of this section.

§48-18-124. Liability for financial institutions providing financial records to the bureau for child support enforcement; 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 bureau for child support enforcement in response to a subpoena issued by the bureau pursuant to section 18-123 of this article;

(2) Disclosing any financial record of an individual to the bureau for child support enforcement 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 bureau for child support enforcement 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 bureau for child support enforcement, after obtaining a financial record of an individual from a financial institution, may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying or enforcing a child support obligation of such individual.

(c) The civil liability of a person who knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section is governed by the provisions of federal law as set forth in 42 U.S.C. §669A.

(d) For purposes of this section, the term “financial institution” means:

(1) Any bank or savings association;
29 (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);

30 (3) Any federal credit union or state-chartered credit union, including an institution-affiliated party of a credit union; and

31 (4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in this state.

32 (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.

33 (f) Notwithstanding any provision of this code to the contrary, the bureau for child support enforcement shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges, to the maximum extent feasible, in which each financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor, as defined in section 1-235 of this chapter, who maintains an account at such institution and who owes past due support. The bureau for child support enforcement will identify to the financial institution an obligor who owes past due support by his or her name and social security number or other taxpayer identification number. The bureau for child support enforcement, upon written request and proof of actual costs incurred, shall pay a reasonable fee to a financial institution for conducting the data matching services not to exceed the actual costs incurred by such financial institution or
one hundred dollars per institution per quarter, whichever is less.

(g) The financial institution, in response to a notice of a lien or levy, shall encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for child support.

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

(1) “Employee” means an individual who is an “employee” for purposes of federal income tax withholding, as defined in 26 U.S.C. §3401;

(2) “Employer” means the person or entity for whom an individual performs or performed any service of whatever nature and who has control of the payment of the individual’s wages for performance of such service or services, as defined in 26 U.S.C. §3401;

(3) An individual is considered a “new hire” on the first day in which that individual performs services for remuneration and on which an employer begins to withhold amounts for income tax purposes.

(b) Except as provided in subsections (c) and (d) of this section, all employers doing business in the state shall report to the bureau for child support enforcement:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.
(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the bureau for child support enforcement the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees as the reporting state.

(e) Employers shall report by mailing to the bureau for child support enforcement a copy of the employee’s W-4 form; however, an employer may transmit such information through another means if approved in writing by the bureau for child support enforcement prior to the transmittal. The report shall include the employee’s name, address and social security number, the employer’s name and address, any different address of the payroll office and the employer’s federal tax identification number. The employer may report other information, such as date of birth or income information, if desired.

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the bureau for child support enforcement, upon its written request, information
regarding an obligor's employment, wages or salary, medical insurance, and location of employment.

(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than twenty-five dollars per failure. If the failure to report is the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than five hundred dollars.

(i) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.

(j) Uses for the new hire information include, but are not limited to, the following:

(1) The state directory of new hires shall furnish the information to the national directory of new hires;

(2) The bureau for child support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the bureau to carry out such purposes;

(3) State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and

(4) The bureau of employment programs shall have access to information reported by employers for purposes of administering employment security and workers' compensation programs.
§48-18-126. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the department of health and human resources, the bureau for child support enforcement shall have the right to request an administrative review of the child support award in the following circumstances:

(1) Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the bureau for child support enforcement shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in article 13-101, et seq. If the amount of the child support award under the existing order differs by ten percent or more from the amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement shall file with the circuit court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the circuit court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the bureau for child support enforcement shall undertake a review of the case only where it is alleged that there has been a substantial change in circumstances. If the bureau for child support enforcement determines that there has been a
substantial change in circumstances and if it is in the best interests of the child, the bureau shall file with the circuit court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article 13-101, *et seq.*, of this chapter

(b) The bureau for child support enforcement shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The bureau for child support enforcement shall give each parent at least thirty days' notice before commencing any review, and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.

(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the notice to be directed to the last known address of each party by first class mail. When the result of the review is a proposal that there be no change, any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a motion for modification setting forth in full the grounds therefor.

(d) For the purposes of this section, a "substantial change in circumstances" includes, but is not limited to, a changed financial condition, a temporary or permanent change in physical custody of the child which the court has not ordered, increased need of the child, or other financial conditions. "Changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance
payments, unemployment compensation and workers' compensation, or a fifteen percent or more variance from the amount of the existing order and the amount of child support that would be awarded according to the child support guidelines.

§48-18-127. Adoption of form to identify payments.

1 The commission shall recommend to the secretary a form for the purpose of identification of child support payments which shall include, at a minimum, any amount of child support obligation paid under an income withholding order, the name and address of the payee, and the availability of health insurance. The form may include other information needed to ensure the proper credit and distribution of such payments. The secretary shall adopt any revised form no later than the first day of July, one thousand nine hundred ninety-six, which shall include all information listed herein. Following the adoption of such form, the commission shall promulgate such legislative rules pursuant to chapter twenty-nine-a as may be necessary to ensure that all information provided on the form is correct. This rule shall constitute an emergency rule within the meaning of section fifteen, article three, chapter twenty-nine-a of this code.


(a) When any filing, copying or other service is provided to the bureau for child support enforcement, the state or county official or the clerk of any court providing such fee for a charge, shall bill the bureau for child support enforcement monthly.

(b) When any filing, copying or other service is provided to a person, agency or entity who is providing services for the bureau for child support enforcement pursuant to a contract, the state or county official or the clerk of any court providing such fee for a charge, shall bill the entity, agency, person or bureau for child support enforcement monthly, in accord with the terms
of the contract. The bureau for child support enforcement shall provide the relevant terms of such agreement to those officials upon implementation of any agreement.

(c) A state or county official and the clerk of any court who charges a deposit, library fee, filing fee for filing and copying documents or their service, if the filing, copying or services is for the bureau for child support enforcement or for a person, entity or agency providing services pursuant to a contract as described in this article, shall bill the bureau for child support enforcement monthly or the person, entity or agency providing such services monthly, in accord with the terms of any contract.

§48-18-129. Acceptance of federal purposes; compliance with federal requirements and standards.

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other forms of assistance by the bureau for child support enforcement for expenditure, disbursement and distribution by the bureau in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

(b) Insofar as such actions are consistent with the laws of this state granting authority to the bureau and the commissioner, the bureau shall comply with such requirements and standards as the secretary of the federal department of health and human services may have determined, as of the effective date of this section, to be necessary for the establishment of an effective program for locating obligors, establishing paternity, obtaining support orders and collecting support payments.
(c) The commissioner shall propose for promulgation a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, to establish time-keeping requirements 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 location of absent parents, the establishment of paternity, and the establishment, modification or enforcement of orders of child support.

§48-18-130. Publicizing child support enforcement services.

The bureau for child support enforcement shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.


(a) All records in the possession of the bureau for child support enforcement, including records concerning an individual case of child or spousal support, shall be kept confidential and shall not be released except as provided below:

(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.

(2) Information as to the whereabouts of a party or the child shall not be released to a person against whom a protective order has been entered with respect to such party or child or where the state has reason to believe that the release of the information to the person making the request may result in physical or emotional harm to the party or the child.
(3) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision (4) of this subsection, to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the bureau as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.

(4) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the bureau shall mail a notice by first class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support, or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclose of records provided in this section in order to determine what records the bureau for child support enforcement may have. In the event of any objection, the bureau shall determine whether or not the information shall be released.
(5) Information in specific cases may be released as is necessary or to determine the identity, location, employment, income and assets of an obligor.

(6) Information and records may be disclosed to the bureau of vital statistics, bureau of employment programs, the workers' compensation division, state tax department and the internal revenue service, or other state or federal agencies or departments as may be necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

(b) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in the county or regional jail not more than six months, or both fined and imprisoned.


(a) All state, county and municipal agencies' offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act, shall cooperate with the bureau or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the bureau 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 bureau 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 bureau 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 bureau for child support enforcement 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 bureau for child support enforcement.

(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 bureau for child support enforcement 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 bureau for child support enforcement or to
any out-of-state agency administering programs under Title IV-
D of the Social Security Act may require the bureau for child
support enforcement 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 18-131 of this chapter.

§48-18-133. Recording of social security numbers in certain
family matters.

(a) The social security number, if any, of any applicant for
a professional license, driver's license, occupational license,
recreational license, or marriage license must be recorded on
the application for such license.

(b) The social security number of any individual who is
subject to a divorce decree, support order, or paternity determina-
tion or acknowledgment must be placed in the records
relating to the matter.

(c) For the purposes of subsection (a) of this section, if the
licensing authority allows the use of a number other than the
social security number on the face of the document while the
social security number is kept on file at the agency, the appli-
cant shall be so advised by such authority.
ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-101. Purposes; how article to be construed.

§48-19-102. Placement of bureau for child support enforcement attorneys throughout the state; supervision; office procedures.

§48-19-103. Duties of the bureau for support enforcement attorneys.

§48-19-104. Vacancies; interim bureau for child support enforcement attorney.


§48-19-101. Purposes; how article to be construed.

(a) The purposes of this article are:

(1) To enumerate and describe the functions and duties of the bureau for child support enforcement attorney as an employee of the bureau for child support enforcement;

(2) To ensure that procedures followed by the bureau for child support enforcement attorney will protect the best interests of children in domestic relations matters; and

(3) To compel the enforcement of support orders, thereby ensuring that persons legally responsible for the care and support of children assume their legal obligations and reduce the financial cost to this state of providing public assistance funds for the care of children.

(b) This article shall be construed to facilitate the resolution of domestic relations matters.

§48-19-102. Placement of bureau for child support enforcement attorneys throughout the state; supervision; office procedures.

(a) The bureau for child support enforcement shall employ twenty-one employees in the position of bureau for child support enforcement attorney, and the offices of the bureau for child support enforcement attorneys shall be distributed
geographically so as to provide an office for each of the following areas of the state:

(1) The counties of Brooke, Hancock and Ohio;
(2) The counties of Marshall, Tyler and Wetzel;
(3) The counties of Pleasants, Ritchie, Wirt and Wood;
(4) The counties of Calhoun, Jackson and Roane;
(5) The counties of Mason and Putnam;
(6) The county of Cabell;
(7) The counties of McDowell and Wyoming;
(8) The counties of Logan and Mingo;
(9) The county of Kanawha;
(10) The county of Raleigh;
(11) The counties of Mercer, Monroe and Summers;
(12) The counties of Fayette and Nicholas;
(13) The counties of Greenbrier and Pocahontas;
(14) The counties of Braxton, Clay, Gilmer and Webster;
(15) The counties of Doddridge, Harrison, Lewis and Upshur;
(16) The counties of Marion and Taylor;
(17) The counties of Monongalia and Preston;
(18) The counties of Barbour, Randolph and Tucker;
(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;

(20) The counties of Berkeley, Jefferson and Morgan; and

(21) The counties of Boone, Lincoln and Wayne.

(b) Each bureau for child support enforcement attorney shall be appointed by the commissioner of the bureau for child support enforcement. The bureau for child support enforcement attorneys shall be duly qualified attorneys licensed to practice in the courts of this state. Bureau for child support enforcement attorneys shall be exempted from the appointments in the indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(c) Nothing contained herein shall prohibit the commissioner from temporarily assigning, from time to time as caseload may dictate, a bureau for child support enforcement attorney from one geographical area to another geographical area.

(d) The bureau for child support enforcement attorney is an employee of the bureau for child support enforcement.

§48-19-103. Duties of the bureau for support enforcement attorneys.

Subject to the control and supervision of the commissioner:

(a) The bureau for child support enforcement attorney 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 bureau for child support enforcement attorney will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
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 bureau for child support enforcement attorney shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the bureau for child support enforcement attorney to direct or regulate the attorney'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 attorney's professional judgment.

(c) The bureau for child support enforcement attorney shall make available to the public an informational pamphlet, designed in consultation with the commissioner. The informational pamphlet shall explain the procedures of the court and the bureau for child support enforcement attorney; the duties of the bureau for child support enforcement attorney; 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 bureau for child support enforcement attorney.

(d) The bureau for child support enforcement shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when the child's caretaker is an applicant for or recipient of temporary assistance for needy families, and when the 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 bureau for child support enforcement attorney 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 bureau for child support enforcement attorney shall decline to so act. The bureau for child support enforcement attorney, upon the request of the mother, alleged father or the caretaker of a child born out of wedlock, regardless of whether the mother, alleged father or the caretaker is an applicant or recipient of temporary assistance for needy families, shall undertake to establish the paternity of such child.

(e) The bureau for child support enforcement attorney 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 bureau for child support enforcement attorney 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 bureau for child support enforcement attorney shall decline to so act. The bureau for child support enforcement attorney, 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 bureau for child support enforcement attorney shall utilize the provisions of article 16-101, et seq. 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 bureau for child support enforcement attorney may utilize the federal courts to obtain and enforce court orders for support.
(f) The bureau for child support enforcement attorney 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 bureau for child support enforcement attorney may decline to commence an action to obtain an order of support under the provisions of article 14-101, et seq., 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 bureau for child support enforcement attorney that an action should properly be brought to obtain an order for support.

(h) If the bureau for child support enforcement office, through the bureau for child support enforcement attorney, 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 commissioner: Provided, That the commissioner 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.

§48-19-104. Vacancies; interim bureau for child support enforcement attorney.

(a) If the position of bureau for child support enforcement attorney becomes vacant for any reason, the commissioner shall appoint a person to the position of bureau for child support enforcement attorney not later than six months after the vacancy occurs.

(b) If necessary, the commissioner may appoint an interim bureau for child support enforcement attorney to serve for not longer than six months until a bureau for child support enforcement attorney is appointed pursuant to this section.


The salary of a bureau for child support enforcement attorney shall be not less than thirty-five thousand dollars per year, and shall be fixed by the commissioner, who shall take into consideration ability, performance of duty and experience. The compensation and expenses of the employees of the office and all operating expenses incurred by the office shall be fixed by the commissioner and paid by the bureau for child support enforcement.

ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

§48-20-103. Proceedings governed by other law.
§48-20-104. Application to Indian tribes.
§48-20-105. International application of chapter.
§48-20-108. Notice to persons outside state.
§48-20-109. Appearance and limited immunity.
§48-20-110. Communication between courts.
§48-20-111. Taking testimony in another state.
§48-20-112. Cooperation between courts; preservation of records.
§48-20-201. Initial child custody jurisdiction.
§48-20-203. Jurisdiction to modify determination.
§48-20-204. Temporary emergency jurisdiction.
§48-20-205. Notice; opportunity to be heard; joinder.
§48-20-206. Simultaneous proceedings.
§48-20-207. Inconvenient forum.
§48-20-208. Jurisdiction declined by reason of conduct.
§48-20-209. Information to be submitted to court.
§48-20-301. Definitions.
§48-20-303. Duty to enforce.
§48-20-304. Temporary visitation.
§48-20-305. Registration of child custody determination.
§48-20-308. Expedited enforcement of child custody determination.
§48-20-309. Service of petition and order.
§48-20-310. Hearing and order.
§48-20-311. Warrant to take physical custody of child.
§48-20-312. Costs, fees and expenses.
§48-20-313. Recognition and enforcement.
§48-20-314. Appeals.
§48-20-315. Role of prosecutor or public official.
§48-20-316. Role of law enforcement.
§48-20-401. Application and construction.
§48-20-402. Severability clause.
§48-20-403. Effective date.

PART 1. GENERAL PROVISIONS.


This article may be cited as the “Uniform Child Custody Jurisdiction and Enforcement Act”.

(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 part 20-301, et seq.

(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.

§48-20-103. 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.

§48-20-104. 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 parts 1 and 2.

(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 part 3.

§48-20-105. International application of chapter.
(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 parts 1 and 2.

(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.

(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.


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 20-108 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.


If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§48-20-108. 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.

§48-20-109. 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.

§48-20-110. 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.

§48-20-111. 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.

§48-20-112. 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.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the
PART 2. JURISDICTION.

§48-20-201. Initial child custody jurisdiction.

(a) Except as otherwise provided in section 20-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under subdivision (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 20-207 or 20-208, 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 significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(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
24 forum to determine the custody of the child under section 20-207 or 20-208; or

26 (4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2) or (3) of this subsection.

29 (b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

32 (c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.


1 (a) Except as otherwise provided in section 20-204, a court of this state which has made a child custody determination consistent with section 20-201 or 20-203 has exclusive, continuing jurisdiction over the determination until:

5 (1) A court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

11 (2) A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

14 (b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it
§48-20-203. Jurisdiction to modify determination.

Except as otherwise provided in section 20-204, 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 20-201 and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 20-202 or that a court of this state would be a more convenient forum under section 20-207; 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.

§48-20-204. 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 20-201 through 20-203, 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 20-201 through 20-203, 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 20-201 through 20-203, 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 20-201 through 20-203, 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 20-201 through 20-203, 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 20-201 through 20-203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 20-201 through 20-203, 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.

§48-20-205. 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 20-108, 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 opportu-
nity 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 proceed-
ings between residents of this state.

§48-20-206. Simultaneous proceedings.

(a) Except as otherwise provided in section 20-204, 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 20-207.

(b) Except as otherwise provided in section 20-204, 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 20-209. 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.

§48-20-207. 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

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§48-20-208. Jurisdiction declined by reason of conduct.
(a) Except as otherwise provided in section 20-204 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 20-201 through 20-203, inclusive, of this article determines that this state is a more appropriate forum under section 20-207; or

(3) No court of any other state would have jurisdiction under the criteria specified in sections 20-201 through 20-203, 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 20-201 through 20-203, 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.
§48-20-209. 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 subdivisions (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 consid-
eration the health, safety or liberty of the party or child and
determines that the disclosure is in the interest of justice.


(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 20-108 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.

PART 3. ENFORCEMENT.

§48-20-301. 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.


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.

§48-20-303. 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 article and
the determination has not been modified in accordance with this article.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination 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.

§48-20-304. 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 part 2 of this article. The order remains in effect until an order is obtained from the other court or the period expires.

§48-20-305. 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;

(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 20-209, 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 part 2 of this article;

(2) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under 20-201, et seq.; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 20-108 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.


(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.
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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 part 2 of this article, 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.

§48-20-308. 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 20-305 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 20-312, 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 20-305, and that:

(A) The issuing court did not have jurisdiction under part 20-201, et seq.;

(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 part 20-201, et seq.;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 20-108, 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 20-305, 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.

§48-20-309. Service of petition and order.

Except as otherwise provided in section 20-311, 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.
§48-20-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to section 20-204, 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 20-305 and that:

(A) The issuing court did not have jurisdiction under part 20-201 et seq., 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 part 20-201, et seq.; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 20-108, 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 20-305, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 20-201, et seq.; 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 20-312 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.

§48-20-311. 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 20-308(b).

(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.

(c) 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.

§48-20-312. 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.
§48-20-313. 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 having jurisdiction to do so under part 20-201, et seq.

§48-20-314. 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 20-204, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§48-20-315. 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.

§48-20-316. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under section 20-315, a law-enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under said section.


If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law-enforcement officers under section 20-315 or 20-316.

PART 4. MISCELLANEOUS PROVISIONS.

§48-20-401. Application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-20-402. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not
§48-20-403. Effective date.

This article takes effect on the first day of July, two thousand.


A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the first day of July, two thousand, is governed by the law in effect at the time the motion or other request was made.

ARTICLE 21. [Reserved.]

ARTICLE 22. ADOPTION.

§48-22-102. Abandonment defined.
§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.
§48-22-104. Agency defined.
§48-22-105. Birth father defined.
§48-22-106. Birth mother defined.
§48-22-110. Legal father defined.
§48-22-111. Marital child defined.
§48-22-113. Outsider father defined.
§48-22-114. Putative father defined.
§48-22-115. Reinquishment defined.
§48-22-117. Unknown father defined.
§48-22-201. Persons who may petition for decree of adoption.
§48-22-301. Persons whose consent or relinquishment is required; exceptions.
§48-22-302. Timing and execution of consent or relinquishment.
§48-22-303. Content of consent or relinquishment.
§48-22-304. Consent or relinquishment by infants.
§48-22-305. Revocation of consent or relinquishment for adoption.
§48-22-401. Delivery of child for adoption; written recital of circumstances.
§48-22-601. Who shall receive notice.
§48-22-602. How notice is to be served.
§48-22-603. Notice to an unknown father.
§48-22-702. Recordation of order; fees; disposition or records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.
§48-22-703. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.
§48-22-704. Finality of order; challenges to order of adoption.
§48-22-801. Adoption of adults.
§48-22-802. Contracts limiting or restraining adoptions.
§48-22-803. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

PART 1. DEFINITIONS.


For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

§48-22-102. Abandonment defined.

“Abandonment” means any conduct by the birth mother, legal father, determined father, outsider father, unknown father or putative father that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child.
§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

“Adoptive parents” or “adoptive mother” or “adoptive father” means those persons who, after adoption, are the mother and father of the child.

§48-22-104. Agency defined.

“Agency” means a public or private entity, including the department of health and human resources, that is authorized by law to place children for adoption.

§48-22-105. Birth father defined.

“Birth father” means the biological father of the child.

§48-22-106. Birth mother defined.

“Birth mother” means the biological mother of the child.


“Birth parents” mean both the biological father and the biological mother of the child.


“Consent” means the voluntary surrender to an individual, not an agency, by a minor child’s parent or guardian, for purposes of the child’s adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.


“Determined father” means, before adoption, a person: (1) In whom paternity has been established pursuant to the provi-
§48-22-110. Legal father defined.

"Legal father" means, before adoption, the male person having the legal relationship of parent to a child: (1) Who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child.

§48-22-111. Marital child defined.

"Marital child" means a child born or conceived during marriage.


"Nonmarital child" means a child not born or conceived during marriage.

§48-22-113. Outsider father defined.

"Outsider father" means the biological father of a child born to or conceived by the mother while she is married to another man who is not the biological father of the child.

§48-22-114. Putative father defined.

"Putative father" means, before adoption, any man named by the mother as a possible biological father of the child.
pursuant to the provisions of section 22-502, who is not a legal
or determined father.

§48-22-115. Relinquishment defined.

"Relinquishment" means the voluntary surrender to an
agency by a minor child’s parent or guardian, for purposes of
the child’s adoption, of the rights of the parent or guardian with
respect to the child, including the legal and physical custody of
the child.


"Stepparent adoption" means an adoption in which the
petitioner for adoption is married to one of the birth parents of
the child or to an adoptive parent of the child.

§48-22-117. Unknown father defined.

"Unknown father" means a biological father whose identity
the biological mother swears is unknown to her before adop-
tion, pursuant to the provisions of section 22-502.

PART 2. PERSONS WHO MAY ADOPT.

§48-22-201. Persons who may petition for decree of adoption.

Any person not married or any person, with his or her
spouse’s consent, or any husband and wife jointly, may petition
a circuit court of the county wherein such person or persons
reside for a decree of adoption of any minor child or person
who may be adopted by the petitioner or petitioners.

PART 3. CONSENT OR RELINQUISHMENT; ABANDONMENT.

§48-22-301. Persons whose consent or relinquishment is required;
exceptions.
(a) Subject to the limitations hereinafter set forth, consent to or relinquishment for adoption of a minor child is required of:

(1) The parents or surviving parent, whether adult or infant, of a marital child;

(2) The outsider father of a marital child who has been adjudicated to be the father of the child or who has filed a paternity action which is pending at the time of the filing of the petition for adoption;

(3) The birth mother, whether adult or infant, of a nonmarital child; and

(4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

(1) Whose parental rights have been terminated pursuant to the provisions of article three, chapter forty-nine of this code;

(2) Whom the court finds has abandoned the child as set forth in 22-306; or

(3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father or determined father is under disability, the court may order the adoption if it finds:

(1) The parental rights of the person are terminated, abandoned or permanently relinquished;
(2) The person is incurably insane; or

(3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.

(e) If one of the persons entitled to parental rights of the child sought to be adopted is deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is twelve years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

§48-22-302. Timing and execution of consent or relinquishment.

(a) No consent or relinquishment may be executed before the expiration of seventy-two hours after the birth of the child to be adopted.
(b) A consent or relinquishment executed by a parent or guardian as required by the provisions of section 22-301 must be signed and acknowledged in the presence of one of the following:

1. A judge of a court of record;
2. A person whom a judge of a court of record designates to take consents or relinquishments;
3. A notary public;
4. A commissioned officer on active duty in the military service of the United States, if the person executing the consent or relinquishment is in military service; or
5. An officer of the foreign service or a consular officer of the United States in another country, if the person executing the consent or relinquishment is in that country.

§48-22-303. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provisions of section 22-301 must be written in plain English or, if the person executing the consent or relinquishment does not understand English, in the person’s primary language. The form of the consent or relinquishment shall include the following, as appropriate:

1. The date, place and time of the execution of the consent or relinquishment;
2. The name, date of birth and current mailing address of the person executing the consent or relinquishment;
3. The date, place of birth and the name or pseudonym (“Baby Boy _____ or Baby Girl _____”) of the minor child;
(4) The fact that the document is being executed more than seventy-two hours after the birth of the child;

(5) If a consent, that the person executing the document is voluntarily and unequivocally consenting to the transfer of legal and physical custody to, and the adoption of the child by, an adoptive parent or parents whose name or names may, but need not be, specified;

(6) If a relinquishment, that the person executing the relinquishment voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purposes of adoption;

(7) If a consent, that it authorizes the prospective adoptive parents, or if a relinquishment, that it authorizes the agency, to consent to medical treatment of the child pending any adoption proceeding;

(8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section 22-305, it may not be revoked or set aside for any other reason;

(9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;

(10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;

(11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;
(12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:

(i) Received a copy of the consent or relinquishment;

(ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article 23-101, et seq.;

(iii) Been advised of the availability of counseling;

(iv) Been advised of the consequences of misidentifying the other birth parent; and

(v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;

(14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section 22-803;

(15) Whether the child is an "Indian child" as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

(16) That the person believes the adoption of the child is in the child’s best interest; and

(17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.
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67 (b) A consent or relinquishment may provide explicitly for its conditional revocation if:

69 (1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

71 (2) A court determines not to terminate another person's parental relationship to the child; or

73 (3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

76 (c) A consent or relinquishment shall also include:

77 (1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

80 (2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and

83 (3) Specific instructions on how to revoke the consent or relinquishment.

§48-22-304. Consent or relinquishment by infants.

1 If a person who has executed a consent to or relinquishment for adoption is under eighteen years of age at the time of the filing of the petition, and such infant parent is a resident of the state, the consent or relinquishment shall be specifically reviewed and approved by the court and a guardian ad litem may be appointed to represent the interests of the infant parent. The guardian ad litem shall conduct a discreet inquiry regarding the consent or relinquishment given, and may inquire of any person having knowledge of the consent or relinquishment. If
the guardian ad litem finds reasonable cause to believe that the
consent or relinquishment was obtained by fraud or duress, the
court may request the infant parent to appear before the court or
at a deposition, so that inquiry may be made regarding the
circumstances surrounding the execution of the consent or
relinquishment. The failure of the court to appoint a guardian ad
litem is not grounds for setting aside a decree of adoption.

§48-22-305. Revocation of consent or relinquishment for adop-
tion.

(a) Parental consent or relinquishment, whether given by an
adult or minor, may be revoked only if:

(1) The person who executed the consent or relinquishment
and the prospective adoptive parent named or described in the
consent or the lawyer for said adoptive parent, or the agency in
case of relinquishment, agree to its revocation prior to the entry
of an adoption order; or

(2) The person who executed the consent or relinquishment
proves by clear and convincing evidence, in an action filed
either within six months of the date of the execution of the
consent or relinquishment or prior to the date an adoption order
is final, whichever date is later, that the consent or relinquish-
ment was obtained by fraud or duress; or

(3) The person who executed the consent or relinquishment
proves by a preponderance of the evidence, prior to the entry of
an adoption order, that a condition allowing revocation as
expressly set forth in the consent or relinquishment has oc-
curred; or

(4) The person who executed the consent or relinquishment
proves by clear and convincing evidence, prior to the entry of
an adoption order, that the consent or relinquishment does not
comply with the requirements set forth in this article.
(b) If the custody of a child during the pendency of a petition to revoke a consent or relinquishment is in issue, the court shall conduct a hearing, within thirty days of service of notice upon the respondent, to determine the issue of temporary custody. The court shall award such custody based upon the best interests of the child.


(a) Abandonment of a child over the age of six months shall be presumed when the birth parent:

1. Fails to financially support the child within the means of the birth parent; and

2. Fails to visit or otherwise communicate with the child when he or she knows where the child resides, is physically and financially able to do so and is not prevented from doing so by the person or authorized agency having the care or custody of the child: Provided, That such failure to act continues uninterrupted for a period of six months immediately preceding the filing of the adoption petition.

(b) Abandonment of a child under the age of six months shall be presumed when the birth father:

1. Denounces the child's paternity any time after conception;

2. Fails to contribute within his means toward the expense of the prenatal and postnatal care of the mother and the postnatal care of the child;

3. Fails to financially support the child within father's means; and
(4) Fails to visit the child when he knows where the child resides: Provided, That such denunciations and failure to act continue uninterrupted from the time that the birth father was told of the conception of the child until the time the petition for adoption was filed.

(c) Abandonment of a child shall be presumed when the unknown father fails, prior to the entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth have occurred as a result of his sexual intercourse with the birth mother.

(d) Notwithstanding any provision in this section to the contrary, any birth parent shall have the opportunity to demonstrate to the court the existence of compelling circumstances preventing said parent from supporting, visiting or otherwise communicating with the child: Provided, That in no event may incarceration provide such a compelling circumstance if the crime resulting in the incarceration involved a rape in which the child was conceived.

PART 4. DELIVERY OF CHILD FOR ADOPTION.

§48-22-401. Delivery of child for adoption; written recital of circumstances.

Whenever a person delivers a child for adoption the person first receiving such child and the prospective adopting parent or parents shall be entitled to receive from such person a written recital of all known circumstances surrounding the birth, medical and family medical history of the child, and an itemization of any facts or circumstances unknown concerning the child’s parentage or that may require further development in the form of an affidavit from the birth mother consistent with the provisions of section 22-502.

PART 5. PETITION FOR ADOPTION.

The petition for adoption may be filed at any time after the child who is the subject of the adoption is born, the adoptive placement determined and all consents or relinquishments that can be obtained have been executed. The hearing on the petition may be held no sooner than forty-five days after the filing of the petition and only after the child has lived with the adoptive parent or parents for a period of six months, proper notice of the petition has been given and all necessary consents or relinquishments have been executed and submitted or the rights of all nonconsenting birth parents have otherwise been terminated.


(a) The petition shall be verified and set forth:

(1) The name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known;

(2) Whether such child is possessed of any property and a full description of the same, if any;

(3) Whether the petitioner or petitioners know the identity of the persons entitled to parental rights or, that the same are unknown to the petitioner or petitioners; and

(4) Whether and on what basis the parental rights of any birth parents should be terminated during the pendency of the adoption petition.

(b) In the case of an unknown father, an affidavit signed by the birth mother setting forth the following information must be attached to the petition:
(1) Whether the birth mother was married at the probable time of conception of the child, or at a later time, and if so, the identity and last known address of such man;

(2) Whether the birth mother was cohabiting with a man at the probable time of conception of the child, and if so, the identity of such man, his last known address and why the woman contends that such man is not the biological father of the child;

(3) Whether the birth mother has received payments or promise of support from any man with respect to the child or her pregnancy, and if so, the identity of such man, his last known address and why the birth mother contends that such man is not the biological father of the child;

(4) Whether the birth mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance, and if so, the identity of such man, his last known address and why the birth mother contends such man is not the biological father of the child;

(5) Whether the birth mother identified any man as the father to any hospital personnel, and if so, the identity of such man, his last known address, the name and address of the hospital and why the birth mother now contends such man is not the biological father of the child;

(6) Whether the birth mother has informed any man that he may be the biological father of the child, and if so, the identity of such man, his last known address and why the birth mother now contends such man is not the biological father of the child;

(7) Whether any man has formally or informally acknowledged or claimed paternity of the child in any jurisdiction at the time of the inquiry, and if so, the identity of such man, his last
known address and why the birth mother contends such man is not the biological father of the child;

(8) That the birth mother has been advised that the failure to identify or the misidentification of the birth father can result in delays and disruptions in the processing of the adoption petition;

(9) That the birth mother has been informed that her statement concerning the identity of the father will be used only for the limited purposes of adoption and that once the adoption is complete, such identity will be sealed; and

(10) That the birth mother has been advised of the remedies available to her for protection against domestic violence pursuant to the provisions of article 27-101, et seq., of this chapter.

(c) In the event the birth mother is deceased or her identity or whereabouts are unknown, no such affidavit shall be required.

(d) The affidavit of the birth mother in the case of an unknown father shall be executed before any person authorized to witness a consent or relinquishment pursuant to the provisions of section 22-302. Any affidavit filed with the petition pursuant to the provisions of this section shall be sealed in the court file and may not be opened except by court order upon a showing of good cause.

(e) If the person petitioning for adoption is less than fifteen years older than the child sought to be adopted, such fact shall be set forth specifically in the petition. In such case, the court shall grant the adoption only upon a specific finding that notwithstanding the differences in age of the petitioner and the child, such adoption is in the best interest of the child: Provided, That in the case of a stepparent adoption, such specific
(f) The petition shall set forth any facts concerning the circumstances of the birth of the child known to the petitioner or petitioners. An effort shall be made to obtain medical and social information, which information, along with all nonidentifying information about the birth, shall accompany the petition and be made a part of the nonidentifying information to be sealed in the court file.

(g) Either the petition, the various consents or relinquishments attached thereto or filed in the cause, the affidavit of the birth mother as set forth herein or in an appendix signed by counsel or other credible persons shall fully disclose all that is known about the parentage of the child.

PART 6. NOTICE OF PROCEEDING FOR ADOPTION.

§48-22-601. Who shall receive notice.

(a) Unless notice has been waived, notice of a proceeding for adoption of a child must be served, within twenty days after a petition for adoption is filed, upon:

(1) Any person whose consent to the adoption is required pursuant to the provisions of section 22-301, but notice need not be served upon a person whose parental relationship to the child or whose status as a guardian has been terminated;

(2) Any person whom the petitioner knows is claiming to be the father of the child and whose paternity of the child has been established pursuant to the provisions of 24-101, et seq.;

(3) Any person other than the petitioner who has legal or physical custody of the child or who has visitation rights with
the child under an existing court order issued by a court in this or another state;

(4) The spouse of the petitioner if the spouse has not joined in the petition; and

(5) A grandparent of the child if the grandparent's child is a deceased parent of the child and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent's parental relationship to the child had not been otherwise terminated.

(b) The court shall require notice of a proceeding for adoption to be served upon any person the court finds, at any time during the proceeding, is:

(1) A person described in subsection (a) of this section who has not been given notice;

(2) A person who has revoked consent or relinquishment pursuant to the provisions of section 22-305; or

(3) A person who, on the basis of a previous relationship with the child, a parent, an alleged parent or the petitioner, can provide relevant information that the court, in its discretion, wants to hear.

§48-22-602. How notice is to be served.

(a) Notice shall be served on each person as required under the provisions of section 22-601, in accordance with rule 4 of the West Virginia rules of civil procedure, except as otherwise provided in this article.

(b) The notice shall inform the person, in plain language, that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any
such rights within the required time after such service. The notice shall also provide that if the person upon whom notice is properly served fails to respond within the required time after its service, said person may not appear in or receive further notice of the adoption proceedings.

(c) In the case of any person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person’s last known address, with instructions to forward; or (3) by publication. If personal service is not achieved and the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as provided herein. Any service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person is unknown, then the person required to give notice shall cause service of notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside, except in cases of foreign adoptions where the child is admitted to this country for purposes of adoptive placement and the United States immigration and naturalization service has issued the foreign-born child a visa or unless good cause is shown for not publishing in the county where the person was last known to reside. The notice shall state the court and its address but not the names of the adopting parents or birth mother, unless the court so orders.
(d) In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, on a guardian ad litem.

(e) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing or of such service on a personal representative or guardian ad litem in which to appear and defend his or her parental rights.

§48-22-603. Notice to an unknown father.

(a) In the case of an unknown father, the court shall inspect the affidavit submitted pursuant to the provisions of section 22-502, consider any additional evidence that the court, in its discretion, determines should be produced, and determine whether said father can be identified. The inspection and consideration of any additional evidence by the court shall be accomplished as soon as practicable after the filing of the petition, but no later than sixty days before the final hearing on the adoption petition.

(b) If the court identifies a father pursuant to the provisions of subsection (a) of this section, then notice of the proceeding for adoption shall be served on the father so identified in accordance with the provisions of section 22-602.

(c) If after consideration of the affidavit and/or the consideration of further evidence, the court finds that proper service cannot be made upon the father because his identity is unknown, the court shall order publication of the notice only if, on the basis of all information available, the court determines that publication is likely to lead to receipt of notice by the father. If the court determines that publication or posting is not likely to lead to receipt of notice, the court may dispense with the publication or posting of a notice.

(a) When the cause has matured for hearing but not sooner than six months after the child has resided continuously in the home of the petitioner or petitioners, the court shall decree the adoption if:

(1) It determines that no person retains parental rights in such child except the petitioner and the petitioner's spouse, or the joint petitioners;

(2) That all applicable provisions of this article have been complied with;

(3) That the petitioner is, or the petitioners are, fit persons to adopt the child; and

(4) That it is in the best interests of the child to order such adoption.

(b) The court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court or judge thereof shall, unless the court or judge otherwise directs, cause a discreet inquiry to be made to determine whether such child is a proper subject for adoption and whether the home of the petitioner or petitioners is a suitable home for such child. Any such inquiry, if directed, shall be made by any suitable and discreet person not related to either the persons previously entitled to parental rights or the adoptive parents, or by an agency designated by the court, or judge thereof, and the results thereof shall be submitted to the court or judge thereof prior to or upon the hearing on the petition and shall be filed with the records of the proceeding.
and become a part thereof. The report shall include, but not be limited to, the following:

(1) A description of the family members, including medical and employment histories;

(2) A physical description of the home and surroundings;

(3) A description of the adjustment of the child and family;

(4) Personal references; and

(5) Other information deemed necessary by the court, which may include a criminal background investigation.

(c) If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested.

(d) Upon the day so assigned, the court or judge thereof shall proceed to a final hearing of the petition and examination of the parties in interest, under oath, and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the
facts stated in the petition are true, and if upon examination the
court or judge thereof is satisfied that the petitioner is, or the
petitioners are, of good moral character, and of respectable
standing in the community, and are able properly to maintain
and educate the child sought to be adopted, and that the best
interests of the child would be promoted by such adoption, then
and in such case the court or judge thereof shall make an order
reciting the facts proved and the name by which the child shall
thereafter be known, and declaring and adjudging that from the
date of such order, the rights, duties, privileges and relations,
therefore existing between the child and those persons
previously entitled to parental rights, shall be in all respects at
an end, and that the rights, duties, privileges and relations
between the child and his or her parent or parents by adoption
shall thenceforth in all respects be the same, including the rights
of inheritance, as if the child had been born to such adopting
parent or parents in lawful wedlock, except only as otherwise
provided in this article: Provided, That no such order shall
disclose the names or addresses of those persons previously
entitled to parental rights.

§48-22-702. Recordation of order; fees; disposition of records;
names of adopting parents and persons previously
entitled to parental rights not to be disclosed;
disclosure of identifying and nonidentifying
information; certificate for state registrar of vital
statistics; birth certificate.

(a) The order of adoption shall be recorded in a book kept
for that purpose, and the clerk shall receive the same fees as in
other cases. All records of proceedings in adoption cases and all
papers and records relating to such proceedings shall be kept in
the office of the clerk of the circuit court in a sealed file, which
file shall be kept in a locked or sealed cabinet, vault or other
container and shall not be open to inspection or copy by
anyone, except as otherwise provided in this article, or upon
court order for good cause shown. No person in charge of adoption records shall disclose the names of the adopting parent or parents, the names of persons previously entitled to parental rights, or the name of the adopted child, except as otherwise provided in this article, or upon court order for good cause shown. The clerk of the court keeping and maintaining the records in adoption cases shall keep and maintain an index of such cases separate and distinct from all other indices kept or maintained by him or her, and the index of adoption cases shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown. Nonidentifying information, the collection of which is provided for in article 23-101, et seq., of this chapter, shall be provided to the adoptive parents as guardians of the adopted child, or to the adult adoptee, by their submitting a duly acknowledged request to the clerk of the court. The clerk may charge the requesting party for copies of any documents, as provided in section eleven, article one, chapter fifty-nine of this code. Either birth parent may from time to time submit additional social, medical or genetic history for the adoptee, which information shall be placed in the court file by the clerk, who shall bring the existence of this medical information to the attention of the court. The court shall immediately transmit all such nonidentifying medical, social or genetic information to the adoptive parents or the adult adoptee.

(b) If an adoptee, or parent of a minor adoptee, is unsuccessful in obtaining identifying information by use of the mutual consent voluntary adoption registry provided for in 23-101, et seq., identifying information may be sought through the following process:

(1) Upon verified petition of an adoptee at least eighteen years of age, or, if less than eighteen, his or her adoptive parent or legal guardian, the court may also attempt, either itself, or
through its designated agent, to contact the birth parents, if
known, to obtain their consent to release identifying informa-
tion to the adoptee. The petition shall state the reasons why the
adoptivee desires to contact his or her birth parents, which
reasons shall be disclosed to the birth parents if contacted. The
court and its agent shall take any and all care possible to assure
that none but the birth parents themselves are informed of the
adoptivee’s existence in relationship to them. The court may
appoint the bureau of children and families, or a private agency
which provides adoption services in accordance with standards
established by law, to contact birth parents as its designated
agent, the said agent shall report to the court the results of said
contact.

(2) Upon the filing of a verified petition as provided in
subdivision (1) of this subsection, should the court be unable to
obtain consent from either of the birth parents to release
identifying information, the court may release such identifying
information to the adoptee, or if a minor, the adoptee’s parents
or guardian, after notice to the birth parents and a hearing
thereon, at which hearing the court must specifically find that
there exists evidence of compelling medical or other good cause
for release of such identifying information.

(c) Identifying information may only be obtained with the
duly acknowledged consent of the mother or the legal or
determined father who consented to the adoption or whose
rights were otherwise relinquished or terminated, together with
the duly acknowledged consent of the adopted child upon
reaching majority, or upon court order for good cause shown.
Any person previously entitled to parental rights may from time
to time submit additional social or medical information which,
notwithstanding other provisions of this article, shall be inserted
into the record by the clerk of the court.
(d) Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said court, showing:

(1) The date and place of birth of the child, if known;

(2) The name of the mother of the child, if known, and the name of the legal or determined father of the child, if known;

(3) The name by which said child has previously been known;

(4) The names and addresses of the adopting parents;

(5) The name by which the child is to be thereafter known; and

(6) Such other information from the record of the adoption proceedings as may be required by the law governing vital statistics and as may enable the state registrar of vital statistics to carry out the duties imposed upon him or her by this section.

(e) Upon receipt of the certificate, the registrar of vital statistics shall forthwith issue and deliver by mail to the adopting parents at their last-known address and to the clerk of the county commission of the county wherein such order of adoption was entered a birth certificate in the form prescribed by law, except that the name of the child shown in said certificate shall be the name given him or her by the order of adoption. The clerk shall record such birth certificate in the manner set forth in section twelve, article five, chapter sixteen of this code.

§48-22-703. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.
(a) Upon the entry of such order of adoption, any person previously entitled to parental rights, any parent or parents by any previous legal adoption, and the lineal or collateral kindred of any such person, parent or parents, except any such person or parent who is the husband or wife of the petitioner for adoption, shall be divested of all legal rights, including the right of inheritance from or through the adopted child under the statutes of descent and distribution of this state, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such person, parent or parents. From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.

(b) For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, but such child shall not inherit from any person entitled to parental rights prior to the adoption nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of a person entitled to parental rights prior to the adoption shall inherit from such person as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this state, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.
§48-22-704. Finality of order; challenges to order of adoption.

(a) An order or decree of adoption is a final order for purposes of appeal to the supreme court of appeals on the date when the order is entered. An order or decree of adoption for any other purpose is final upon the expiration of the time for filing an appeal when no appeal is filed or when an appeal is not timely filed, or upon the date of the denial or dismissal of any appeal which has been timely filed.

(b) An order or decree of adoption may not be vacated, on any ground, if a petition to vacate the judgment is filed more than six months after the date the order is final.

(c) If a challenge is brought within the six-month period by an individual who did not receive proper notice of the proceedings pursuant to the provisions of this article, the court shall deny the challenge, unless the individual proves by clear and convincing evidence that the decree or order is not in the best interest of the child.

(d) A decree or order entered under this article may not be vacated or set aside upon application of a person who waived notice, or who was properly served with notice pursuant to this article and failed to respond or appear, file an answer or file a claim of paternity within the time allowed.

(e) A decree or order entered under this article may not be vacated or set aside upon application of a person alleging there is a failure to comply with an agreement for visitation or communication with the adopted child: Provided, That the court may hear a petition to enforce the agreement, in which case the court shall determine whether enforcement of the agreement would serve the best interests of the child. The court may, in its sole discretion, consider the position of a child of the age and maturity to express such position to the court.
(f) The supreme court of appeals shall consider and issue rulings on any petition for appeal from an order or decree of adoption and petitions for appeal from any other order entered pursuant to the provisions of this article as expeditiously as possible. The circuit court shall consider and issue rulings on any petition filed to vacate an order or decree of adoption and any other pleadings or petitions filed in connection with any adoption proceeding as expeditiously as possible.

(g) When any minor has been adopted, he or she may, within one year after becoming of age, sign, seal and acknowledge before proper authority, in the county in which the order of adoption was made, a dissent from such adoption, and file such instrument of dissent in the office of the clerk of the circuit court which granted said adoption. The clerk of the county commission of such county and the circuit clerk shall record and index the same. The adoption shall be vacated upon the filing of such instrument of dissent.

PART 8. MISCELLANEOUS PROVISIONS.

§48-22-801. Adoption of adults.

Any adult person who is a resident of West Virginia may petition the circuit court or any other court of record having jurisdiction of adoption proceedings for permission to adopt one who has reached the age of eighteen years or over, and, if desired, to change the name of such person. The consent of the person to be adopted shall be the only consent necessary. The order of adoption shall create the same relationship between the adopting parent or parents and the person adopted and the same rights of inheritance as in the case of an adopted minor child. If a change in name is desired, the adoption order shall so state.

§48-22-802. Contracts limiting or restraining adoptions.
Any contract, agreement or stipulation which endeavors to deny to any person or persons the right to petition for adoption of any person, or which endeavors to alter the time or manner of adoption as provided in this article, is contrary to the public policy of the state and such portion of any contract, agreement or stipulation is null and void and of no effect.

§48-22-803. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives or agrees to give to another person money, property, service or other thing of value in consideration for the recipient's locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(b) Any person who knowingly receives, accepts or offers to accept money, property, service or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than five years or, in the discretion of the court, be confined in jail not more than one year and fined not less than one hundred dollars nor more than two thousand dollars.

(d) A child whose parent, guardian or custodian has sold or attempted to sell said child in violation of the provisions of this article may be deemed an abused child as defined by section
three, article one, chapter forty-nine of this code. The court may place such a child in the custody of the department of health and human resources or with such other responsible person as the best interests of the child dictate.

(e) This section does not prohibit the payment or receipt of the following:

(1) Fees paid for reasonable and customary services provided by the department of health and human resources or any licensed or duly authorized adoption or child-placing agency.

(2) Reasonable and customary legal, medical, hospital or other expenses incurred in connection with the pregnancy, birth and adoption proceedings.

(3) Fees and expenses included in any agreement in which a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or approved by a court in a proceeding relating to the placement plan, prospective placement or placement of a minor child for adoption.

(f) At the final hearing on the adoption, an affidavit of any fees and expenses paid or promised by the adoptive parents shall be submitted to the court.

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

§48-23-102. Legislative purpose.
§48-23-201. Applicability of definitions.
§48-23-203. Adoption defined.
§48-23-204. Adult defined.
§48-23-205. Agency defined.
§48-23-206. Genetic and social history defined.
§48-23-207. Health history defined.
§48-23-208. Mutual consent voluntary adoption registry or registry defined.
§48-23-209. Putative father defined.
§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.
§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.
§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.
§48-23-403. Registration by a birth father.
§48-23-404. Registration by a birth parent who use an alias in terminating parental rights.
§48-23-501. Prerequisites to disclosure of identifying information.
§48-23-503. Cases where disclosure of identifying information cannot occur.
§48-23-504. Matching and disclosure procedures.
§48-23-505. Retention of data by the registry.
§48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.
§48-23-507. Fees for operations of the mutual consent voluntary adoption registry.
§48-23-601. Compilation of nonidentifying information on health history and social and genetic history.
§48-23-701. Prohibited conduct.

**PART 1. GENERAL PROVISIONS.**


(a) Adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parent and child between an adoptee and his or her adoptive parents. These legal and social premises underlying adoption must be maintained. The Legislature recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents while other such adult adoptees have no such desire. The Legislature further recognizes that some birth parents have a strong desire to obtain identifying information.
about their biological children who were surrendered for adoption, while other birth parents have no such desire.

(b) The Legislature fully recognizes the right to privacy and confidentiality of:

(1) Birth parents whose children were adopted;

(2) The adoptees; and

(3) The adoptive parents.

§48-23-102. Legislative purpose.

The purpose of this article is to:

(1) Set up a mutual consent voluntary adoption registry where birth parents and adult adoptees may register their willingness to the release of identifying information to each other;

(2) To provide for the disclosure of such identifying information to birth parents or adoptees, or both, through a social worker employed by a licensed adoption agency, provided each birth parent and the adult adoptee voluntarily registers on his or her own; and

(3) To provide for the transmission of nonidentifying health and social and genetic history to the adult adoptees, birth parents and other specified persons; and

(4) to provide for disclosure of identifying information for cause shown.

PART 2. DEFINITIONS.

§48-23-201. Applicability of definitions.
For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.


"Adoptee" means a person who has been legally adopted in the state of West Virginia.

§48-23-203. Adoption defined.

"Adoption" means the judicial act of creating the relationship of parent and child where it did not exist previously.

§48-23-204. Adult defined.

"Adult" means a person who is eighteen years of age or more.

§48-23-205. Agency defined.

"Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption.

§48-23-206. Genetic and social history defined.

"Genetic and social history" means a comprehensive report, when obtainable, on the birth parents, siblings to the birth parents, if any, other children of either birth parent, if any, and parents of the birth parents, which shall contain the following information:

1. Medical history;
2. Health status;
8 (3) Cause of and age at death;
9 (4) Height, weight, eye and hair color;
10 (5) Ethnic origins;
11 (6) Where appropriate, levels of educational and professional achievement; and
13 (7) Religion, if any.

§48-23-207. Health history defined.

"Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological and medical care history.

§48-23-208. Mutual consent voluntary adoption registry or registry defined.

"Mutual consent voluntary adoption registry" or "registry" means a place provided for herein where eligible persons as described in section 23-501 may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this article.

§48-23-209. Putative father defined.

"Putative father" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origin of a child and who claims or is alleged to be the father of genetic origin of such child.

PART 3. ESTABLISHMENT AND MAINTENANCE OF VOLUNTARY ADOPTION REGISTRY.
§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

The division of human services, as provided for in §9-2-1, et seq. of this code, shall establish and maintain the mutual consent voluntary adoption registry, except that the division may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing post-legal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the division.

The secretary of the department of health and human resources shall promulgate and adopt such rules as are necessary for implementing this article.

PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

Use of the mutual consent voluntary adoption registry for obtaining identifying information about birth parents and adult adoptees is available to birth parents and adult adoptees, except as otherwise limited by section 23-402.

§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

(a) A birth parent is not eligible to use the registry until his or her child who was adopted is eighteen years of age or older.

(b) An adult adoptee is not eligible to use the registry if he or she has a sibling in his or her adoptive family who is under the age of eighteen years.

§48-23-403. Registration by a birth father.
A birth father may register if:

1. He was named as the father in the original sealed birth certificate;
2. He legitimated or formally acknowledged the child as provided by law; or
3. He signed a voluntary abandonment and release for the child's adoption as provided by law.

§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

If a birth parent used an alias name in terminating his or her parental rights, and the alias is listed in the original sealed birth record, that birth parent may register if the agency, organization, entity or person that placed the child for adoption, certifies to the court that the individual seeking to register used the alias name set forth in the original sealed birth certificate.

PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

The adult adoptee and each birth parent may voluntarily, without having been contacted by any employee or agent of the entity operating the registry, place his or her name in the appropriate registry before any disclosure or identifying information can be made. A qualified person may register by submitting a notarized affidavit to the appropriate registry stating his or her name, address and telephone number and his or her willingness to be identified solely to the other relevant persons who register. No registration may be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with the provisions specified in section 23-601 of this article. The failure of any of the three above

Upon registering, the registrant shall participate in not less than one hour of counseling with a social worker employed by the entity that operates the registry, except if a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry. When an eligible person registers concerning an adoption that was arranged through an agency which has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify by certified mail the agency which handled the adoption within ten business days after the date of registration.

§48-23-503. Cases where disclosure of identifying information cannot occur.

In any case where the identity of the birth father was unknown to the birth mother, or where the administrator learns that one or both of the birth parents are deceased, this information shall be shared with the adult adoptee. In these kinds of cases, the adoptee will not be able to obtain identifying information through the registry, and he or she would be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

§48-23-504. Matching and disclosure procedures.

(a) Each mutual consent voluntary adoption registry must be operated under the direction of an administrator.
(b) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit which sets forth the following:

1. The current name and address of the affiant;
2. Any previous name by which the affiant was known;
3. The original and adopted names, if known, of the adopted child;
4. The place and date of birth of the adopted child; or
5. The name and address of the adoption agency or other entity, organization or person placing the adopted child, if known.

(c) The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit. The registry has no duty to search for an affiant who fails to register his or her most recent address.

(d) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents. Such processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

(e) The administrator shall determine that there is a match when the adult adoptee and the birth mother or the adult adoptee and the birth father have each filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in section 23-502.

(f) When a match has taken place, the department shall directly notify all parties through a direct and confidential
contact. The contact shall be made by an employee or agent of the agency receiving the assignment and shall be made face to face, rather than by mail, telephone or other indirect means. The employee or agent shall be a trained social worker who has expertise in post-legal adoption services.

§48-23-505. Retention of data by the registry.

Any affidavits filed and other information collected shall be retained for ten years following the date of registration by any qualified person to which the information pertains. Any qualified person who registers may renew his or her registration for ten additional years within one hundred eighty days prior to the last day of ten years from the date of initial registration.

§48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.

A mutual consent voluntary adoption registry shall obtain only information necessary for identifying a birth parent or adult adoptee and in no event shall obtain information of any kind pertaining to the adoptive parents, any siblings to the adult adoptee who are children of the adoptive parents, the income of anyone and reasons for adoptive placement.

§48-23-507. Fees for operations of the mutual consent voluntary adoption registry.

All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through user's fees charged to all persons who register.

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

§48-23-601. Compilation of nonidentifying information on health history and social and genetic history.
(a) Prior to placement for adoption, the court shall require that the licensed adoption agency or, where an agency is not involved, the person, entity or organization handling the adoption, shall compile and provide to the prospective adoptive parents a detailed written health history and genetic and social history of the child. These histories must exclude information that would identify birth parents or members of a birth parent's family. The histories must be set forth in a document that is separate from any document containing such identifying information.

(b) The court, or an agency designated by the court, or judge thereof, shall provide to an agency, person, or organization handling the adoption the forms which must be utilized in the acquisition of the above-described detailed nonidentifying written health history and genetic and social history of the child. If the records cannot be obtained, the court shall make specific findings as to why the records are unobtainable.

(c) Records containing such nonidentifying information and which are set forth on a document described in subsection (a) above, separate from any document containing identifying data:

(1) Shall be retained by the clerk of the court for ninety-nine years; and

(2) Shall be available upon request, throughout the time specified in subdivision (1) of this subsection together with any additional nonidentifying information which may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent's family, or the adoptee or any adoptive parent of the adoptee, to the following persons only:

(A) The adoptive parents of the child or, in the event of death of the adoptive parents, the child's guardian;
(B) The adoptee upon reaching the age of eighteen;

(C) In the event of the death of the adoptee, the adoptee's spouse if he or she is the legal parent of the adoptee's child or the guardian of any child of the adoptee;

(D) In the event of the death of the adoptee, any progeny of the adoptee who is age eighteen or older; and

(E) The birth parent of the adoptee.

(d) The person requesting nonidentifying health history and genetic and social history shall pay the actual and reasonable costs of providing that information. This provision requiring payment of costs is subject to sections of this article that provide for the adoptee to obtain information by petitioning the court.

PART 7. PROHIBITED CONDUCT.

§48-23-701. Prohibited conduct.

(a) No person, agency, entity or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer or judge of any court of this state, may disclose any confidential information relating to an adoption except as provided in this article or pursuant to a court order. Any employer who knowingly or negligently allows any employee to disclose information in violation of this article is subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this law.

(b) Any person, agency, entity or organization of any kind who discloses information in violation of this law is liable to the parties so injured in an action to recover damages in respect thereto.
PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.


(a) Notwithstanding any other provision of law, the information acquired by any registry may not be disclosed under any sunshine or freedom of information legislation, rules or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including an agency, may file a class action to force the registry to disclose identifying information.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.


§48-24-102. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

§48-24-104. Establishment of paternity and duty of support.

§48-24-105. Representation of parties.

§48-24-106. Establishing paternity by acknowledgment of natural father.


(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

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
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 allega-
tions 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 respondent, rather than her husband, is the father of the child;

(3) The state of West Virginia, including the bureau for child support enforcement;

(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 or her 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.
(1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the respondent’s paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.

(4) When a party desires to challenge the results of the blood or tissue tests or the expert’s analysis of inherited characteristics, he or she shall file a written protest with the family law master or circuit court or with the bureau for 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 bureau for child support enforcement, 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 bureau for child support enforcement, the bureau shall initially bear all costs subject to recoupment from the alleged father if paternity is established.

§48-24-104. Establishment of paternity and duty of support.

(a) When the respondent, 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 support guidelines set forth in article 13-101, et seq., 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 respondent had actual knowledge that he was believed to be the father of the child;

(2) That the respondent deliberately concealed his whereabouts or deliberately evaded attempts to serve process upon himself or herself; or

(3) That the respondent deliberately misrepresented relevant information which would have enabled the petitioner 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.
36 (e) Bills for pregnancy, childbirth and genetic testing are
37 admissible and constitute prima facie evidence of medical
38 expenses incurred.

39 (f) The thirty-six month limitation on reimbursement
40 support does not apply to the award of medical expenses
41 incurred.

42 (g) For purposes of this section, "reimbursement support"
43 means the amount of money awarded as child support for a
44 period of time prior to the entry of the order which establishes
45 the support obligation.

§48-24-105. Representation of parties.

1 Notwithstanding any provision of this code to the contrary,
2 no parent in any proceeding brought pursuant to this article may
3 have counsel appointed for them according to section one,
4 article twenty-one, chapter twenty-nine of this code or other-
5 wise receive legal services provided solely by the state in such
6 action. The bureau for child support enforcement providing
7 representation to the state of West Virginia shall solely repre-
8 sent the state of West Virginia and does not provide any
9 representation to any party.

§48-24-106. Establishing paternity by acknowledgment of natural
father.

1 A written, notarized acknowledgment executed pursuant to
2 the provisions of section twelve, article five, chapter sixteen of
3 this code legally establishes the man as the father of the child
4 for all purposes and child support may be established in
5 accordance with the support guidelines set forth in article 13-
6 101, et seq.

ARTICLE 25. CHANGE OF NAME.
§48-25-101. Petition to circuit court for change of name; contents thereof; notice of application.

Any person desiring a change of his or her own name, or that of his or her child or ward, may apply therefor to the circuit court or any other court of record having jurisdiction of the county in which he or she resides, or the judge thereof in vacation, by petition setting forth that he or she has been a bona fide resident of such county for at least one year prior to the filing of the petition, the cause for which the change of name is sought, and the new name desired; and previous to the filing of such petition such person shall cause to be published a notice of the time and place that such application will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

§48-25-102. Objections to change of name.

Any person who is likely to be injured by the change of name of any person so petitioning, or who knows of any reason why the name of any such petitioner should not be changed, may appear at the time and place named in the notice, and shall be heard in opposition to such change.

§48-25-103. When court may order change of name.
Upon the filing of such petition, and upon proof of the publication of such notice and of the matters set forth in the petition, and being satisfied that no injury will be done to any person by reason of such change, that reasonable and proper cause exists for changing the name of petitioner, and that such change is not desired because of any fraudulent or evil intent on the part of the petitioner, the court or judge thereof in vacation may order a change of name as applied for except as provided by the provisions of this section. The court may not grant any change of name for any person convicted of any felony during the time that the person is incarcerated. The court may not grant any change of name for any person required to register with the state police pursuant to the provisions of article eight-f, chapter sixty-one of this code during the period that such person is required to register. The court may not grant a change of name for persons convicted of first degree murder in violation of section one, article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later. The court may not grant a change of name of any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

§48-25-104. Recordation of order changing name.

When such order is made the petitioner shall forthwith cause a certified copy thereof to be filed in the office of the clerk of the county commission of the county where petitioner resides, and such clerk shall record the same in a book to be kept for the purpose and index the same under both the old and the new names. For such recording and indexing the clerk shall be allowed the same fee as for a deed.

§48-25-105. When new name to be used.
When such change has been ordered and a certified copy of the order filed in the office of the county clerk, the new name shall thenceforth be used in place of the former name.

§48-25-106. Unlawful change of name.

Any person residing in this state who shall change his or her name, or assume another name, unlawfully, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars, and upon a repetition thereof shall be confined in the county or regional jail not exceeding sixty days.

§48-25-107. Unlawful change of name by certain felons and registrants.

(a) It is unlawful for any person convicted of first degree murder in violation of section one, article two, chapter sixty-one of this code, and for any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code, for which a sentence of life imprisonment is imposed, to apply for a change of name for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

(b) It is unlawful for any person required to register with the state police pursuant to the provisions of article twelve, chapter fifteen of this code to apply for a change of name during the period that the person is required to register.

(c) It is unlawful for any person convicted of a felony to apply for a change of name during the period that such person is incarcerated.

(d) A person who violates the provisions of subsection (a), (b) or (c) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty
19 dollars nor more than ten thousand dollars or imprisoned in the
20 county or regional jail for not more than one year, or both fined
21 and incarcerated.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§48-26-101. Title.
§48-26-201. Applicability of definitions.
§48-26-203. Department defined.
§48-26-204. Shelter defined.
§48-26-205. Secretary defined.
§48-26-206. Family protection program defined.
§48-26-301. Family protection services board continued; terms.
§48-26-401. Duties of board generally.
§48-26-402. Duties regarding licenses for shelters and programs.
§48-26-403. Duties regarding rules.
§48-26-404. Regulation of intervention programs for perpetrators; required
provisions; duties of providers.
§48-26-405. Licensing providers of intervention programs for perpetrators.
§48-26-406. Closure of shelters; provisional licensee waivers.
§48-26-501. Development of state public health plan for reducing domestic
violence.
§48-26-502. Notice of victims’ rights, remedies and available services; required
information.
§48-26-503. Standards, procedures and curricula.
§48-26-601. Funding application requirements.
§48-26-602. Award provisions.
§48-26-603. Domestic violence legal services fund.
§48-26-604. Annual reports of shelters and programs receiving funds.
§48-26-701. Confidentiality.
§48-26-801. Continuing education for certain state employees.
§48-26-802. Continuing education for law-enforcement officers concerning
domestic violence.
§48-26-804. Required curricula for public education system.
§48-26-805. Continuing education for school personnel who are required to report
child abuse and neglect.
§48-26-901. Establishment of local advisory councils authorized.
§48-26-902. Purpose of local advisory councils.
§48-26-1101. Referral to shelters.
§48-26-1102. Continuation of board.
PART 1. GENERAL PROVISIONS.

§48-26-101. Title.

This article shall be known as the "West Virginia Domestic Violence Act".

PART 2. DEFINITIONS.

§48-26-201. Applicability of definitions.

For purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.


"Board" means the family protection services board created pursuant to section 26-301 of this article.

§48-26-203. Department defined.

"Department" means the department of health and human resources.

§48-26-204. Shelter defined.

"Shelter" or "family protection shelter" means a licensed domestic violence shelter created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence, abuse or rape as well as the children of such victims.

§48-26-205. Secretary defined.

"Secretary" means the secretary of the department of health and human resources.
§48-26-206. Family protection program defined.

“Family protection program” or “program” means a licensed domestic violence program offered by a locally controlled organization primarily for the purpose of providing services to victims of domestic violence or abuse and their children.

PART 3. FAMILY PROTECTION SERVICES BOARD.

§48-26-301. Family protection services board continued; terms.

(a) The family protection services board, previously created, is continued. Membership of the board is comprised of five persons. The governor, with the advice and consent of the Senate, shall appoint three members of the board. One appointed member must be a commissioner of a shelter. One appointed member must be a member of a major trade association that represents shelters across the state. The final gubernatorial appointee must be a member of the public. The other two members are the secretary of the department of health and human resources, or his or her designee, and the chairperson of the governor’s committee on crime, delinquency and correction, or his or her designee.

(b) The terms of the three members appointed by the governor are staggered terms of three years. The initial term of the commissioner of the shelter is a one-year term, the initial term of the representative of the trade association is a two-year term and the initial term of the appointed member of the public is a three-year term.

(c) In the event that a member of the board ceases to be qualified for appointment, then his or her appointment terminates.

PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.
§48-26-401. Duties of board generally.

1 It is the duty of the board to:

2 (1) Regulate its procedural practice;

3 (2) Receive and consider applications for the development
4 of shelters;

5 (3) Facilitate the formation and operation of shelters;

6 (4) Promulgate rules to implement the provisions of this
7 article and any applicable federal guidelines;

8 (5) Advise the secretary on matters of concern relative to
9 his or her responsibilities under this article;

10 (6) Study issues pertinent to family protection shelters,
11 programs for domestic violence victims, and report the results
12 to the governor and the Legislature;

13 (7) Conduct hearings as necessary under this article;

14 (8) Delegate to the secretary such powers and duties of the
15 board as the board may deem appropriate to delegate, including,
16 but not limited to, the authority to approve, disapprove, revoke
17 or suspend licenses;

18 (9) Deliver funds to shelters within forty-five days of the
19 approval of a proposal for such shelters;

20 (10) Establish a system of peer review which will ensure
21 the safety, well-being and health of the clients of all shelters
22 operating in the state;

23 (11) Evaluate annually each funded shelter to determine its
24 compliance with the goals and objectives set out in its original
25 application for funding or subsequent revisions;
(12) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section 2-604 of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;

(13) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;

(14) Enforce standards; and

(15) Review its rules biannually.

§48-26-402. Duties regarding licenses for shelters and programs.

(a) The board shall establish an application for licensing all shelters and programs.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June of the next year.

(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the shelter or program. All such waivers or provisional licenses shall be reviewed semi-annually.

§48-26-403. Duties regarding rules.
The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

§48-26-404. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

(a) The family protection services board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the minimum level of responsibility, service and accountability expected from providers of programs of intervention for perpetrators of domestic violence. These rules shall be developed in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, with organizations that represent the interests of shelters, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children. If a program of intervention for perpetrators receives funds from the state or is licensed by the state, the board shall review the program’s compliance with the rules promulgated pursuant to this subsection.

(b) The rules for programs for intervention for perpetrators of domestic violence shall include:

(1) Criteria concerning a perpetrator’s appropriateness for the program;

(2) Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic violence and the programs of intervention for perpetrators; and

(3) Required qualifications concerning education, training and experience for providers of intervention programs.
(c) The standards shall be based upon and incorporate the following principles:

(1) The focus of a program is to end the acts of violence and ensure the safety of the victim and any children or other family or household members;

(2) Domestic violence constitutes behavior for which the perpetrator is accountable; and

(3) Although alcohol and substance abuse often exacerbate domestic violence, it is a separate problem which requires specialized intervention or treatment.

(d) Providers of perpetrator intervention programs:

(1) Shall require participants to sign the following releases:

(A) Allowing the provider to inform the victim and the victim’s advocates that the perpetrator is participating in a batterers’ intervention prevention program with the provider and to provide information to the victim and the victim’s advocates, if necessary, for the victim’s safety;

(B) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and

(C) Allowing the provider, for good cause, to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation officers and child protective services;

(2) Shall report to the court, if the participation was court ordered, and to the victim, if the victim requests and provides a method of notification, any assault, failure to comply with program requirements, failure to attend the program and threat of harm by the perpetrator;
(3) Shall report to the victim, without the participant’s authorization, all threats of harm;

(4) May report to the victim, without the participant’s authorization, the participant’s failure to attend.

§48-26-405. Licensing providers of intervention programs for perpetrators.

(a) The board shall establish an application for licensure for all providers of programs of intervention for perpetrators in accordance with section 26-404 of this article.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year.

(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the operation of a program. All such waivers or provisional licenses shall be reviewed semiannually.

§48-26-406. Closure of shelters; provisional licensee waivers.

(a) The board may close any shelter which violates the standards established under this article and which threatens the health, well being and safety of its clients: Provided, That the board shall establish a plan to place such clients in other
shelters and to develop a method to continue serving the areas
served by the shelter to be closed.

(b) The board may place a shelter, which violates standards
established under this article and which threatens the health,
well being and safety of its clients, under receivership and
operate said shelter. The board shall have access and may use
all assets of the shelter.

(c) In order to close or place a shelter in receivership, the
board shall hold a public hearing within the confines of
municipality or county in which the shelter is located. The
board, by the first day of September, one thousand nine hundred
eighty-nine, shall establish rules and regulations to govern the
conduct of such hearings: Provided, That four members of the
board must vote in the affirmative before a shelter is closed or
placed in receivership.

(d) If a shelter disagrees with the findings of the board, the
shelter may appeal such ruling to the circuit court of Kanawha
County or the circuit court of the county where the shelter is
located pursuant to the provisions of section four, article five,
chapter twenty-nine-a of this code.

PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.

§48-26-501. Development of state public health plan for reducing
domestic violence.

(a) The bureau for public health of the department of health
and human resources, in consultation with the family protection
services board, shall:

(1) Assess the impact of domestic violence on public
health; and
(2) Develop a state public health plan for reducing the incidence of domestic violence in this state.

(b) The state public health plan shall:

(1) Include, but not be limited to, public education, including the use of the various communication media to set forth the public health perspective on domestic violence;

(2) Be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, organizations representing the interests of shelters, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children; and

(3) Be completed on or before the first day of January, two thousand.

(c) The bureau for public health of the department of health and human resources shall:

(1) Transmit a copy of the state public health plan to the governor and the Legislature; and

(2) Review and update the state public health plan annually.

§48-26-502. Notice of victims' rights, remedies and available services; required information.

(a) The bureau for public health of the department of health and human resources shall make available to health care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.

(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to
the patient, and every health care facility shall make available
to all patients, a written form notice of the rights of victims and
the remedies and services available to victims of domestic
violence.

§48-26-503. Standards, procedures and curricula.

(a) The bureau for public health of the department of health
and human resources shall publish model standards, including
specialized procedures and curricula, concerning domestic
violence for health care facilities, practitioners and personnel.

(b) The procedures and curricula shall be developed in
consultation with public and private agencies that provide
programs for victims of domestic violence, advocates for
victims, organizations representing the interests of shelters and
personnel who have demonstrated expertise and experience in
providing health care to victims of domestic violence and their
children.

PART 6. FUNDING.

§48-26-601. Funding application requirements.

(a) A shelter or program may apply to the board for a grant
of funds as provided by this article. The application shall
include, but not be limited to, the following:

(1) Evidence that the organization submitting the applica-
tion is incorporated in this state as a nonprofit corporation;

(2) A list of the incorporators of the corporation and a list
of the officers and the board of directors;

(3) The proposed budget of the shelter or program for the
following fiscal year;
(4) A summary of the services proposed to be offered in the following fiscal year by the shelter or program;

(5) An evaluation of local needs for a shelter or program;

(6) An estimate of the number of people to be served by the shelter or program during the following fiscal year; and

(7) Any other information the board may feel is necessary.

(b) In order to qualify for a grant of funds under this article, each family protection shelter or program shall:

(1) Provide or propose to provide a facility which will serve as temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children;

(2) Be incorporated in this state as a nonprofit corporation;

(3) Have a board of directors which represents a broad spectrum of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse;

(4) Receive at least fifty-five percent of its funds from sources other than funds distributed under this article. These sources may be public or private and may include contributions of goods or services; and

(5) Require persons employed by or volunteering services to the shelter or program to maintain the confidentiality of any information which may identify individuals served by it.

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial
funding, the shelter or program may not be refunded until the discrimination ceases.

(d) A family protection shelter program may not be refunded if its original application projected the provision of residential services and such services were not provided in the first six months following disbursement of the original funds under this article: Provided, That upon a subsequent showing that the funds were used in the manner proposed in the original application, the shelter or program is not barred from subsequent funding. A revision of the original application may be filed with the board.

§48-26-602. Award provisions.

Grants made pursuant to this article shall be awarded on the basis of the following criteria:

1. Demonstration of local need for proposed services;
2. Merit of project as proposed;
3. Demonstration of local control of the shelter or program;
4. Administrative design and efficiency of the project; and
5. The board shall develop a formula for equal distribution of fifty percent of any money it awards.

§48-26-603. Domestic violence legal services fund.

There is hereby established in the state treasury a special revenue account, designated as the “domestic violence legal services fund”, which shall be an appropriated fund for receipt of grants, gifts, fees, or federal or state funds designated for legal services for domestic violence victims. Expenditures from the fund shall be limited to attorneys employed by domestic
violence shelters, or employed by nonprofit agencies which
establish a collaborative relationship with a domestic violence
shelter, that provide civil legal services to victims of domestic
violence.

§48-26-604. Annual reports of shelters and programs receiving
funds.

A shelter or program receiving funds pursuant to this article
shall file an annual report with the board by the thirty-first day
of each October for the prior fiscal year. The report shall
include statistics on the number of persons served, the relation-
ship of the victim to the abuser, services provided to the abuser,
the number of referrals made for medical, psychological,
financial, educational, vocational, child care or legal services
and the results of an independent audit. No information
contained in the report may identify any person served by the
shelter or enable any person to determine the identity of any
such person.

PART 7. CONFIDENTIALITY.

§48-26-701. Confidentiality.

(a) No program or shelter receiving funds pursuant to this
article shall disclose or be compelled to disclose, release or be
compelled to release any written records created or maintained
in providing services pursuant to this article except:

(1) Upon written consent of the person seeking or who has
sought services from the program or the shelter;

(2) In any proceeding brought under sections four and five,
article six, chapter nine of this code or article six, chapter forty-
nine of this code;
10 (3) As mandated by article six-a, chapter forty-nine and
11 article six, chapter nine of this code;

12 (4) Pursuant to an order of any court based upon a finding
13 that said information is sufficiently relevant to a proceeding
14 before the court to outweigh the importance of maintaining the
15 confidentiality established by this section;

16 (5) To protect against a clear and substantial danger of
17 imminent injury by a client to himself or herself or another;

18 (6) For treatment or internal review purposes to the staff of
19 any program or shelter if the client is also being cared for by
20 other health professionals in the program or shelter.

21 (b) No consent or authorization for the transmission or
22 disclosure of confidential information shall be effective unless
23 it is in writing and signed by the client. Every person signing an
24 authorization shall be given a copy.

PART 8. EDUCATION CONCERNING DOMESTIC VIOLENCE.

§48-26-801. Continuing education for certain state employees.

1 (a) (1) Subject to the provisions of subdivision (2) of this
2 subsection, the department of health and human resources shall
3 provide or require continuing education concerning domestic
4 violence for child protective services workers, adult protective
5 services workers, social services workers, family support
6 workers and workers in the bureau for child support enforce-
7 ment.

8 (2) Funding for the continuing education provided or
9 required under subdivision (1) of this section may not exceed
10 the amounts allocated for that purpose by the spending unit
11 from existing appropriations. No provision of this section may
be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators, advocates for victims, organizations representing the interests of shelters and the family protection services board.


(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of the initial law-enforcement officer training required before a person may be employed as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, all law-enforcement officers shall receive training concerning domestic violence.

(2) Funding for the training required under subdivision (1) of this section may not exceed the amounts allocated by the spending unit for that purpose from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction and the objectives in learning and performance for the education of law-enforcement officers required pursuant to this section shall be developed and presented in consultation with public and private providers of programs for victims of domestic violence and programs of intervention for perpetrators, persons who have demonstrated expertise in training and education concerning domestic violence and organizations representing the interests of shelters.

(a) (1) Subject to the provisions of subdivision (2) of this subsection, as a part of existing training for court personnel, the supreme court of appeals shall develop and present courses of continuing education concerning domestic violence for magistrates assistants, and juvenile and adult probation officers.

(2) Funding for the continuing education required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the supreme court of appeals from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The course of instruction shall be prepared and may be presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, advocates for victims, persons who have demonstrated expertise in training and education concerning domestic violence, organizations representing the interests of shelters and the family protection services board.

§48-26-804. Required curricula for public education system.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state board of education shall select or develop:

(A) Curricula that are appropriate for various ages for pupils concerning the dynamics of violence, prevention of violence, including domestic violence; and

(B) Curricula for school counselors, health care personnel, administrators and teachers concerning domestic violence.

(2) Funding for selecting or developing the curricula required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may
be construed to require the Legislature to make any appropriation.

(b) The curricula shall be selected or developed by the state board of education in consultation with public and private agencies that provide programs for conflict resolution, violence prevention, victims of domestic violence and programs of intervention for perpetrators of domestic violence, advocates for victims, organizations representing the interests of shelters, persons who have demonstrated expertise and experience in education and domestic violence and the family protection services board.

§48-26-805. Continuing education for school personnel who are required to report child abuse and neglect.

(a) (1) Subject to the provisions of subdivision (2) of this subsection, the state department of education shall provide or require courses of continuing education concerning domestic violence for employees who are required by law to report child abuse or neglect.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence, persons who have demonstrated expertise in education and domestic violence, advocates for victims, organizations representing the interests of shelters and the family protection services board.
PART 9. LOCAL ADVISORY COUNCILS.

§48-26-901. Establishment of local advisory councils authorized.

A local government, a county or a combination thereof may establish an advisory council on domestic violence.

§48-26-902. Purpose of local advisory councils.

The purpose of a local advisory council is to increase the awareness and understanding of domestic violence and its consequences and to reduce the incidence of domestic violence within the locality by:

1. Promoting effective strategies for identification of the existence of domestic violence and intervention by public and private agencies serving persons who are victims of domestic violence;

2. Providing for public education;

3. Facilitating communication among public and private agencies that provide programs to assist victims and programs of intervention for perpetrators;

4. Providing assistance to public and private agencies and providers of services to develop statewide procedures and community and staff education, including procedures to review fatalities; and

5. Developing a comprehensive plan of data collection concerning domestic violence in cooperation with courts, prosecutors, law-enforcement officers, health care practitioners and other local agencies, in a manner that protects the identity of victims of domestic violence. Nothing contained in this subdivision shall be construed to modify or diminish any existing law relating to the confidentiality of records.
§48-26-1101. Referral to shelters.

Where shelters are available, the law-enforcement officer or other public authority investigating an alleged incident of domestic violence shall advise the victim of the availability of the family protection shelter to which that person may be admitted.

§48-26-1102. Continuation of board.

After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the family protection services board should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the family protection services board shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-203. Family or household members defined.
§48-27-204. Law-enforcement agency defined.
§48-27-205. Program for victims of domestic violence defined.
§48-27-301. Jurisdiction.
§48-27-305. Persons who may file petition.
§48-27-306. Counterclaim or affirmative defenses.
§48-27-308. Charges for fees and costs postponed.
§48-27-310. Full faith and credit.
§48-27-401. Proceedings when divorce action is pending.
§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.
§48-27-403. Temporary orders of court; hearings; persons present.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
§48-27-506. Effect of protective order on real and personal property.
§48-27-508. Costs to be paid to family court fund.
§48-27-509. Conditions of visitation in cases involving domestic violence.
§48-27-601. Filing of orders with law-enforcement agency; affidavit as to award of possession of real property; service of order on respondent.
§48-27-702. Law-enforcement officers to provide information and transportation.
§48-27-901. Civil contempt; violation of protective orders; order to show cause.
§48-27-1002. Arrest in domestic violence matters; conditions.
§48-27-1101. The forms to be provided.
§48-27-1105. Rule for time-keeping requirements.

PART 1. GENERAL PROVISIONS.

(a) The Legislature of this state finds that:

1. Every person has a right to be safe and secure in his or her home and family and to be free from domestic violence.

2. Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic violence;

3. Domestic violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

4. Domestic violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

1. To assure victims of domestic violence the maximum protection from abuse that the law can provide;

2. To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic violence has continuing contact;

3. To expand the ability of law-enforcement officers to assist victims, to enforce the domestic violence law more effectively, and to prevent further abuse;
(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;

(5) To recognize that domestic violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and

(6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic violence which are otherwise punishable as crimes under the laws of this state.

**PART 2. DEFINITIONS.**


For the purposes of this article and article 26-101, et seq., of this chapter, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.


“Domestic 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 section 27-203:

(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;

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*
(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.

§48-27-203. Family or household members defined.

"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 one through seven of this subsection.

§48-27-204. Law-enforcement agency defined.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(a) "Law-enforcement agency" means and is limited to:

1. The state police and its members;
2. A county sheriff and his or her law-enforcement deputies; and
3. A police department in any municipality as defined in section two, article one, chapter eight of this code.

(b) The term "law-enforcement agency" includes the department of health and human resources in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.

§48-27-205. Program for victims of domestic violence defined.

"Program for victims of domestic violence" means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.


"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 violence into educational intervention groups or counseling pursuant to a court order; or
2. Offers educational intervention groups to perpetrators of domestic violence.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
Circuit courts and magistrate courts, as constituted under chapter fifty of this code, have concurrent jurisdiction over proceedings under this article: Provided, That on and after the first day of September, two thousand one, magistrate court jurisdiction shall be limited, and thereafter, final hearings wherein a protective order is sought shall be heard before a circuit judge or a family law master.


The action may be heard in the county in which the domestic violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by 5-106.


The petitioner’s right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.


(a) An action under this article is commenced by the filing of a verified petition.

(b) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.
(c) Husband and wife are competent witnesses in domestic violence proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.

§48-27-305. Persons who may file petition.

A petition for a protective order may be filed by:

(1) A person seeking relief under this article for herself or himself;

(2) An adult family or household member for the protection of the victim or for any family or household member who is a minor child or physically or mentally incapacitated to the extent that he or she cannot file on his or her own behalf, or

(3) A person who reported or was a witness to domestic violence and who, as a result, has been abused, threatened, harassed or who has been the subject of other actions intended to intimidate the person.

§48-27-306. Counterclaim or affirmative defenses.

(a) A respondent named in a petition alleging domestic violence may file a verified counterclaim stating any claim that the respondent has against the petitioner that would be a basis for filing a petition under this article.

(b) In response to a petition or counterclaim, the person alleged to have committed the domestic violence may assert any affirmative defense that he or she may have available.


No person accompanying a person who is seeking to file a petition under the provisions of this article is precluded from being present if his or her presence is desired by the person
§48-27-308. Charges for fees and costs postponed.

No fees shall be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders, or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.


Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a petition for relief under this article shall be heard within ten working days of the filing of the appeal.

§48-27-310. Full faith and credit.

Any protective order issued pursuant to this article shall be effective throughout the state in every county. Any protective order issued by any other state, territory or possession of the United States, Puerto Rico, the District of Columbia or Indian tribe shall be accorded full faith and credit and enforced as if it were an order of this state whether or not such relief is available in this state. A protective order from another jurisdiction is presumed to be valid if the order appears authentic on its face and shall be enforced in this state. If the validity of the order is contested, the court or law enforcement to which the order is presented shall, prior to the final hearing, determine the existence, validity and terms of such order in the issuing jurisdiction. A protective order from another jurisdiction may

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
be enforced even if the order is not entered into the state law-enforcement information system described by 27-802.


A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (1) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (2) a copy of the order is mailed by certified or registered mail to the respondent at the respondent’s last known residence and returned undelivered.

PART 4. COORDINATION WITH PENDING CIRCUIT COURT ACTIONS.

*§48-27-401. Proceedings when divorce action is pending.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to part 5-501, et seq.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order has been entered in the action for divorce, annulment and separate maintenance, pursuant to part 5-501, et seq.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(c) Except as provided in section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to part 5-501, et seq., of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section 27-505, any order issued pursuant to this section where a subsequent action is filed seeking a divorce, annulment or separate maintenance, shall remain in full force and effect by operation of this statute until a temporary or final order is issued pursuant to section part 5-501, et seq., or a final order granting or dismissing the action for divorce, annulment or separate maintenance.

*§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family law master or judge in an action for divorce, annulment or separate maintenance, notwithstanding the provisions of subsection 27-401(c).

(b) A person who is a party to an action for divorce, annulment or separate maintenance in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent’s abuse of a child, as abuse is defined in section 27-202. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.

(e) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family law master before whom the action is pending and to law-enforcement agencies. Upon receipt of the petition and order, the master shall examine its provisions. Within ten days of the magistrate’s issuance of the temporary emergency protective order, the master shall issue an order either to extend such emergency protection for a time certain or to vacate the magistrate’s order. The master shall forthwith give notice to all parties and to the issuing magistrate court. The magistrate court clerk shall forward a copy of the master’s order to law-enforcement agencies.
42 If no temporary order has been entered in the pending
43 action for divorce, annulment or separate maintenance, the
44 master shall forthwith return the order with such explanation to
45 the issuing magistrate. The magistrate who issued the order
46 shall vacate the order, noting thereon the reason for termination.
47 The magistrate court clerk shall transmit a copy of the vacated
48 order to the parties and law-enforcement agencies.

*§48-27-403. Temporary orders of court; hearings; persons present.

1 (a) Upon filing of a verified petition under this article, the
court may enter such temporary orders as it may deem neces-
sary to protect the petitioner or minor children from domestic
violence and, upon good cause shown, may do so ex parte
without the necessity of bond being given by the petitioner.
Clear and convincing evidence of immediate and present danger
of abuse to the petitioner or minor children shall constitute
good cause for the issuance of an ex parte order pursuant to this
section. If the respondent is not present at the proceeding, the
petitioner or the petitioner’s legal representative shall certify to
the court, in writing, the efforts which have been made to give
notice to the respondent or just cause why notice should not be
required. Copies of medical reports or records may be admitted
into evidence to the same extent as though the original thereof.
The custodian of such records shall not be required to be
present to authenticate such records for any proceeding held
pursuant to this subsection. Following such proceeding, the
court shall order a copy of the petition to be served immediately
upon the respondent, together with a copy of any temporary
order issued pursuant to the proceedings, notice setting forth the
time and place of the final hearing and a statement of the right
of the respondent to be present and to be represented by
counsel. Copies of any order made under the provisions of this
section shall also be issued to the petitioner and any
law-enforcement agency having jurisdiction to enforce the

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
order, including municipal police, the county sheriff's office and local office of the state police, within twenty-four hours of the entry of the order. A temporary protective order is effective until such time as a hearing is held and is in full force and effect in every county in this state.

(b) Within five days following the issuance of the court's temporary order, a final hearing shall be held at which the petitioner must prove the allegation of domestic violence, or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, or such petition shall be dismissed. If the respondent has not been served with notice of the temporary order, the hearing may be continued in order to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis for dismissing the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(d) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

(a) The court shall enter a protective order if it finds, after hearing the evidence adduced by the parties, that the petitioner has proved the allegations of domestic violence by a preponderance of the evidence. If the respondent is present at the hearing and elects not to contest the allegations of domestic violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic violence and the court may directly address the issues of the relief requested.

(b) The court may modify the terms of a protective order at any time upon subsequent petition filed by any party.


(a) A protective order must order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

(b) The protective order must 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.

(c) The protective order must inform the respondent that the order is in full force and effect in every county of this state.

(d) The protective order must 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”.


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.
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 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.


When the person to be protected is a person who reported or was a witness to the domestic violence, the terms of a protective order may order the respondent:

(1) Order the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the person to be protected; and

(2) Order the respondent to refrain from entering the school, business or place of employment of the person to be protected for the purpose of violating the protective order.

*§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
Except as otherwise provided by subsection 27-401(d) of this article, a protective order issued by a magistrate, family law master or circuit judge pursuant to this article 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.

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.

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.

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 effect in every county of this state and shall so state.

§48-27-506. Effect of protective order on real and personal property.

No order entered pursuant to this article may in any manner affect title to any real property, except as provided in section 14-301 for past due child support. The personal property of any

Mutual protective orders are prohibited unless both parties have filed a petition under part 3 of this article and have proven the allegations of domestic 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.

§48-27-508. Costs to be paid to family court fund.

Any person against whom a protective order is issued shall be assessed costs of twenty-five dollars. Such costs shall be paid to the family court fund established pursuant to section 29-403 of this chapter.

§48-27-509. Conditions of visitation in cases involving domestic violence.

(a) A court may award visitation of a child by a parent who has committed domestic violence only if the court finds that adequate provision for the safety of the child and the petitioner can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;
(2) Order that supervision be provided by another person or agency;

(3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of the visitation;

(4) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for the twelve hours that precede the visitation;

(5) Order the perpetrator of domestic violence to pay the costs of supervised visitation, if any;

(6) Prohibit overnight visitation;

(7) Impose any other condition that the court considers necessary to provide for the safety of the child, the petitioner or any other family or household member.

(c) Regardless of whether visitation is allowed, the court may order that the address of the child and the petitioner be kept confidential.

(d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.


Any party to a temporary or final protective order may as a matter of right present a petition for appeal, within five days of entry of the order in magistrate court, to the circuit court. The order shall remain in effect pending an appeal unless stayed by the circuit court. No bond shall be required for any appeal under this section. In any case where a petition for appeal is

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
filed under this section, the petition shall be heard de novo by
the circuit court within ten days from the filing of the petition
for appeal.


Two years after the entry of a final protective order, the
circuit court, may, upon motion, order that the protective order
and references to the order be purged from the file maintained
by any law-enforcement agency and may further order that the
file maintained by the court be sealed and not opened except
upon order of the court when such is in the interest of justice.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

*§48-27-601. Filing of orders with law-enforcement agency; affida-
vit as to award of possession of real property; service of order on respondent.

(a) Upon entry of an order pursuant to section 27-403 or
part 27-501, et seq., or an order entered pursuant to part 5-501,
et seq., granting relief provided for by this article, a copy of the
order shall, no later than the close of the next business day, be
transmitted by the court or the clerk of the court to a local office
of the municipal police, the county sheriff and the West
Virginia state police, where it shall be placed in a confidential
file, with access provided only to the law-enforcement agency
and the respondent named on the order.

(b) A sworn affidavit may be executed by a party who has
been awarded exclusive possession of the residence or house-
hold, pursuant to an order entered pursuant to section 27-503,
and shall be delivered to such law-enforcement agencies
simultaneously with any order, giving his or her consent for a
law-enforcement officer to enter the residence or household,
without a warrant, to enforce the protective order or temporary
order.

*Clerk's Note: This section was also amended by S. B. 730 (Chapter 181), which
passed subsequent to this act.
(c) Orders shall be promptly served upon the respondent. Failure to serve a protective order on the respondent does not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

PART 7. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE.


Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.

§48-27-702. Law-enforcement officers to provide information and transportation.

(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of
the victim, upon the request of such victim, to a shelter or an appropriate court.

PART 8. RECORD-KEEPING BY LAW-ENFORCEMENT OFFICERS.


(a) Each law-enforcement agency shall maintain records on all incidents of domestic violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the state police, listing all such incidents of domestic violence. Such reports shall include:

(1) The age and sex of the victim and the perpetrator of domestic violence;

(2) The relationship between the parties;

(3) The type and extent of abuse;

(4) The number and type of weapons involved;

(5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action and the victim's request for assistance;

(6) Whether any prior reports have been made, received or filed regarding domestic violence on any prior occasion and if so, the number of such prior reports; and

(7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim: Provided, That no information which will permit the identification of the parties involved in any incident of domestic violence shall be included in such report.
(b) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

1. The number of domestic violence complaints received;
2. The number of complaints investigated;
3. The number of complaints received from alleged victims of each sex;
4. The average time lapse in responding to such complaints;
5. The number of complaints received from alleged victims who have filed such complaints on prior occasions;
6. The number of aggravated assaults and homicides resulting from such repeat incidents;
7. The type of police action taken in disposition of the cases; and
8. The number of alleged violations of protective orders.


(a) The West Virginia state police shall maintain a registry in which it shall enter certified copies of orders entered by courts from every county in this state pursuant to the provisions of this article, or from other jurisdictions pursuant to their laws: Provided, That the provisions of this subsection are not effective until a central automated record system is developed.
(b) A petitioner who obtains a protective order pursuant to this article, or from another jurisdiction pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A protective order may be registered by the petitioner in a county other than the issuing county by obtaining a copy of the order of the issuing court, certified by the clerk of that court, and presenting that certified order to the local office of the West Virginia state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including the city police and the county sheriff’s office.

(e) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued, if the petitioner has not registered the order in the county in which an alleged violation of the order occurs.


Nothing in this article shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: Provided, That nothing in this section shall prohibit the West Virginia state police from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.
§48-27-901. Civil contempt; violation of protective orders; order to show cause.

(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. Such petition shall be filed in a court in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with such order.


(a) When a respondent abuses the petitioner or minor children, or both, or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or section 5-508 granting the relief pursuant to the provisions of this article, any person authorized to file a petition pursuant to the provisions of section 27-305 or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section 27-901.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.*

(a) A respondent who abuses the petitioner and/or minor children or who is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or section 5-508 granting the relief pursuant to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) When a respondent previously convicted of the offense described in subsection (a) of this section abuses the petitioner and/or minor children or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article, the respondent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

PART 10. ARRESTS.


(a) When a law-enforcement officer observes any respondent abuse the petitioner and/or minor children or the respondent’s physical presence at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or section 5-508 granting the relief pursuant to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
granting the relief pursuant to the provisions of this article, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section 27-903, a law-enforcement officer may arrest the perpetrator for said offense where:

(1) The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

§48-27-1002. Arrest in domestic violence matters; conditions.
(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) Condition of the alleged victim.—One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) Condition of the accused.—Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.
(3) Condition of the scene.—Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions.—Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section 5-508, the arresting officer:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence; and

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.
PART 11. MISCELLANEOUS PROVISIONS.

§48-27-1101. The forms to be provided.

The West Virginia supreme court of appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article, and the court shall distribute such forms to the clerk of the circuit court and magistrate court of each county within the state.


The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article 26-101, et seq., of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.

1 All law-enforcement officers shall receive training relating to response to calls involving domestic violence.


1 All judges may and magistrates and family law masters shall receive a minimum of three hours of training by the first day of October, one thousand nine hundred ninety-three, and three hours per year each year thereafter on domestic violence which shall include training on the psychology of domestic violence, the battered wife and child syndromes, sexual abuse, courtroom treatment of victims, offenders and witnesses, available sanctions and treatment standards for offenders, and available shelter and support services for victims. The supreme court of appeals may provide such training in conjunction with other judicial education programs offered by the supreme court.

§48-27-1105. Rule for time-keeping requirements.

1 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 article.

ARTICLE 28. [Reserved]

ARTICLE 29. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.

§48-29-101. Emancipation from all disabilities under common law.
§48-29-102. Emancipation from all disabilities to contract.
§48-29-103. Emancipation from all disabilities as to personal or real property.

*Clerk's Note: This section was also amended by S. B. 652 (Chapter 93), which passed subsequent to this act.
§48-29-104. Liability for married woman's torts.
§48-29-105. Emancipation from liability for torts or contracts of spouse.
§48-29-201. Burden of proof.
§48-29-202. Presumption of gift in certain transactions between husband and wife.
§48-29-301. Requirement of a writing for contract between husband and wife.
§48-29-302. Loss of consortium.
§48-29-303. Liability of husband and wife for purchases and services.

PART 1. EMANCIPATION FROM ALL DISABILITIES AND INCAPACITIES.

§48-29-101. Emancipation from all disabilities under common law.

All married women, including married women who are not residents of this state to the extent that they are affected by the laws of this state, are fully emancipated from all the disabilities and relieved from all the incapacities to which they were formerly subject under common law.

§48-29-102. Emancipation from all disabilities to contract.

All married women, including married women who are not residents of this state to the extent that they are affected by the laws of this state, may make contracts of any kind and assume or stipulate for obligations of any kind, in any form or manner permitted under this code. In no case may any act, contract or obligation of a married woman require, for its validity or effectiveness, the authority of her husband or of a judge.

§48-29-103. Emancipation from all disabilities as to personal or real property.

All married women, including married women who are not residents of this state to the extent that they are affected by the laws of this state, may own in their own right, real and personal property, acquired by descent, gift or purchase and may manage, sell, convey or dispose of any real or personal property
6 to the same extent and in the same manner a married man can
7 property belonging to him.

§48-29-104. Liability for married woman’s torts.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are liable for torts that they have committed.

§48-29-105. Emancipation from liability for torts or contracts of
spouse.

1 No married person, including married persons who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, is liable for the contracts or torts of his or her
4 spouse.

PART 2. CONVEYANCES BETWEEN MARRIED PERSONS.

§48-29-201. Burden of proof.

1 The burden of proof in any proceeding questioning the
2 validity or lawfulness of any conveyance or transfer of property
3 or any interest in property from one spouse to the other spouse
4 by the spouse making the conveyance or transfer, or his or her
5 heir, devisee or creditor is on the spouse in whose favor the
6 conveyance or transfer was made.

§48-29-202. Presumption of gift in certain transactions between
husband and wife.

1 Where one spouse purchases real or personal property and
2 pays for the real or personal property, but takes title in the name
3 of the other spouse, the transaction, in the absence of evidence
4 of a contrary intention, is presumed to be a gift by the spouse so
5 purchasing to the spouse in whose name the title is taken:
6 Provided, That in the case of an action under the provisions of
article seven of this chapter wherein the court is required to
determine what property of the parties constitutes marital
property and equitably divide the same, the presumption created
by this section does not apply, and a gift between spouses must
be affirmatively proved.

PART 3. HUSBAND AND WIFE.

§48-29-301. Requirement of a writing for contract between
husband and wife.

A contract between a husband and wife shall not be
enforceable by way of action or defense, unless there is some
writing sufficient to indicate that a contract has been made
between them and signed by the spouse against whom enforce-
ment is sought or by his or her authorized agent or broker.

§48-29-302. Loss of consortium.

A married woman may sue and recover for loss of consor-
tium to the same extent and in all cases as a married man.

§48-29-303. Liability of husband and wife for purchases and
services.

(a) A husband and wife are both liable for the reasonable
and necessary services of a physician rendered to the husband
or wife while residing together as husband and wife, or for
reasonable and necessary services of a physician rendered to
their minor child while residing in the family of its parents, and
for the rental of any tenement or premises actually occupied by
the husband and wife as a residence and reasonably necessary
to them for such purpose.

(b) A husband and wife are liable when any article pur-
chased by either goes to:
11  (1) The support of the family;
12  (2) The joint benefit of both;
13  (3) The reasonable apparel of either and their minor child residing in the family;
14  (4) The reasonable support of a spouse and child while abandoned by the other spouse;
15  (c) A husband and wife are liable for the reasonable services of any domestic, laborer or other person from which the family or both husband and wife benefit.

ARTICLE 30. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48-30-101. Hearings before a master.
§48-30-102. Hearing procedures.
§48-30-103. Acts or failures to act in the physical presence of family law masters.
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PART 1. HEARINGS.

§48-30-101. Hearings before a master.

1  (a) Persons entitled to notice of a master’s hearing shall be timely informed of:
(1) The time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted.

(b) The master shall give all interested parties opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment when time, the nature of the proceedings and the public interest permit. To the extent that the parties are unable to settle or compromise a controversy by consent, the master shall provide the parties a hearing and make a recommended order in accordance with the provisions of sections 30-102 and 30-202.

(c) The master who presides at the reception of evidence pursuant to section 30-102 shall prepare the default order or make and enter the temporary order provided for in section 30-201, or make the recommended order required by section thirteen of this article, as the case may be. Except to the extent required for disposition of ex parte matters as authorized by this chapter, a master may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; nor shall the master attempt to supervise or direct an employee or agent engaged in the performance of investigative or prosecuting functions for a prosecuting attorney, the division of human services or any other agency or political subdivision of this state.

§48-30-102. Hearing procedures.

(a) This section applies, according to the provisions thereof, to hearings required by section ten, article two-a, chapter fifty-one of this code to be conducted by a family law master.
(b) A family law master to whom a matter is referred pursuant to the provisions of section ten, article two-a, chapter fifty-one of this code shall preside at the taking of evidence.

(c) A family law master presiding at a hearing under the provisions of this chapter may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony, receive relevant evidence and establish a record;

(2) Rule on motions for discovery and offers of proof;

(3) Take depositions or have depositions taken when the ends of justice may be served;

(4) Regulate the course of the hearing;

(5) Hold pretrial conferences for the settlement or simplification of issues and enter time-frame orders which shall include, but not be limited to, discovery cut-offs, exchange of witness lists and agreements on stipulations, contested issues and hearing schedules;

(6) Make and enter temporary orders on procedural matters, including, but not limited to, substitution of counsel, amendment of pleadings, requests for hearings and other similar matters;

(7) Accept voluntary acknowledgments of support liability or paternity;

(8) Accept stipulated agreements;

(9) Prepare default orders for entry if the person against whom an action is brought does not respond to notice or process within the time required;
(10) Recommend orders in accordance with the provisions of section 30-202;

(11) Require the issuance of subpoenas and subpoenas duces tecum, issue writs of attachment, hold hearings in aid of execution and propound interrogatories in aid of execution and fix bond or other security in connection with an action for enforcement in a child or spousal support matter; and

(12) Take other action authorized by general order of the circuit court or the chief judge thereof consistent with the provisions of this chapter.

(d) Except as otherwise provided by law, a moving party has the burden of proof on a particular question presented. Any oral or documentary evidence may be received, but the family law master shall exclude irrelevant, immaterial or unduly repetitious evidence. A party is entitled to present his or her case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In determining claims for money due or the amount of payments to be made, when a party will not be prejudiced thereby, the family law master may adopt procedures for the submission of all or part of the evidence in written form.

(e) Hearings before a family law master shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family law master and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family law master, such magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family law master shall provide a duplicate copy of the tape or other electronic record-
ing medium of each hearing held. For evidentiary purposes, a
duplicate of such electronic recording prepared by the secre-
tary-clerk shall be a "writing" or "recording" as those terms are
defined in rule 1001 of the West Virginia rules of evidence, and
unless the duplicate is shown not to reflect the contents accu-
rrately, it shall be treated as an original in the same manner that
data stored in a computer or similar data is regarded as an
"original" under such rule. The party requesting the copy shall
pay to the family law master an amount equal to the actual cost
of the tape or other medium or the sum of five dollars, which-
ever is greater. Unless otherwise ordered by the court, the
preparation of a transcript and the payment of the cost thereof
shall be the responsibility of the party requesting the transcript.

(f) The recording of the hearing or the transcript of testi-
mony, as the case may be, and the exhibits, together with all
papers and requests filed in the proceeding, constitute the
exclusive record for recommending an order in accordance with
section 30-202, and on payment of lawfully prescribed costs,
shall be made available to the parties. When a family law
master's final recommended order rests on official notice of a
material fact not appearing in the evidence in the record, a party
is entitled, on timely request, to an opportunity to show the
contrary.

(g) After a temporary parenting plan has been agreed to by
the parties or ordered by the family law master, or after a
temporary support order has been entered by the court, a
scheduled final evidentiary hearing cannot be continued without
the agreement of the parties or without a review of the tempo-
rary parenting plan and the temporary support order.

(h) In any case in which a party has filed an affidavit that he
or she is financially unable to pay the fees or costs, the family
law master shall determine whether either party is financially
able to pay such fees and costs based on the information set
forth in the affidavit or on any evidence submitted at the
hearing. If the family law master determines that either party is
financially able to pay the fees and costs, the family law master
shall assess the payment of such fees and costs accordingly as
part of a recommended order. The provisions of this subsection
do not alter or diminish the provisions of section one, article
two, chapter fifty-nine of this code.

§48-30-103. Acts or failures to act in the physical presence of
family law masters.

(a) If in the master's presence a party, witness or other
person conducts himself or herself in a manner which would
constitute direct contempt if committed in the presence of a
circuit judge, the master shall halt any proceeding which may
be in progress and inform the person that their conduct consti-
tutes direct contempt and give notice of the procedures and
possible dispositions which may result.

(b) (1) If a circuit judge is sitting in the same county in
which the conduct occurred, or is otherwise available, the
alleged contemnor shall be immediately taken before the circuit
judge. Disposition of these matters shall be given priority over
any other matters, with the exception of a criminal trial in
progress.

(2) If a circuit judge is unavailable, then the master shall
schedule a hearing before the circuit court and the alleged
contemnor shall be advised, on the record, of the time and place
of the hearing. The master may elect, in his or her discretion, to
obtain a warrant for the arrest of the alleged contemnor from
the magistrate court on the charge of contempt with the matter
to be heard by the circuit court.

(c) At the hearing, the circuit court shall be advised of the
charges, receive the evidence and rule in the same manner as
would be appropriate if the conduct complained of occurred in
the physical presence of a circuit judge. In addition to other sanctions the court may award attorney’s fees and costs.

(d) Prior to or during any hearing before a master, if the master determines that a situation exists which warrants the presence of security during such hearing, the master shall inform the sheriff of the need for such security and the time and place of the hearing, and the sheriff shall assign a deputy to act as bailiff during such hearing.

§48-30-104. Family law master’s docket.

(a) Every family law master shall establish a regular docket or other means for hearing urgent motions regarding child support, child custody or visitation, protection from family violence or abuse, possession of the home or other urgent matter. The family law master shall make all decisions and rulings before him or her within thirty days, or sooner after the close of the evidence in the proceeding before the master. If the master’s recommended decision is not so timely made, the master shall, in writing, notify the administrator of the West Virginia supreme court as to why he or she has not so ruled; and the administrator of the West Virginia supreme court may take appropriate action against said master including pay suspensions, or reprimand or dismissal without pay for up to six months.

(b) Upon the request of the family law master, the clerk of the circuit court shall, under the general direction of the master, maintain the master’s docket, schedule trials and hearings and deliver case files to the master.

PART 2. TEMPORARY ORDERS; DEFAULT ORDERS; RECOMMENDED ORDERS.

§48-30-201. Default orders; temporary orders.
(a) In any proceeding in which the amount of support is to be established, if the obligor has been served with notice of a hearing before a master and does not enter an appearance, the family law master shall prepare a default order for entry by the circuit judge, which order fixes support in an amount at least equal to the amount paid as public assistance under section four, article three, chapter nine of this code, if the obligee or custodian receives public assistance, or in an amount at least equal to the amount that would be paid as public assistance if the obligee or custodian were eligible to receive public assistance, unless the family law master has sufficient information in the record so as to determine the amount to be fixed in accordance with the child support guidelines.

(b) A master who presides at a hearing under the provisions of section 30-102 is authorized to make and enter temporary support and custody orders which, when entered, shall be enforceable and have the same force and effect under law as temporary support orders made and entered by a judge of the circuit court, unless and until such support orders are modified, vacated or superseded by an order of the circuit court.

(c) All orders prepared by a master shall provide for automatic withholding from income of the obligor if arrearages in support occur, if no such provision already exists in prior orders or if the existing order as it relates to withholding is not in compliance with applicable law.


(a) This section applies, according to the provisions thereof, when a hearing has been conducted in accordance with section 30-102.

(b) A master who has presided at the hearing pursuant to section 30-102 shall recommend an order and findings of fact and conclusions of law to the circuit court within ten days
following the close of the evidence. Before the recommended order is made, the master may, in his or her discretion, require the parties to submit proposed findings and conclusions and the supporting reasons therefor.

(c) The master shall sign and send the recommended order, any separate document containing the findings of fact and conclusions of law and the notice of recommended order as set forth in section 30-203 to the attorney for each party, or if a party is unrepresented, directly to the party, in the same manner as pleadings subsequent to an original complaint are served in accordance with rule five of the rules of civil procedure. The master shall file the recommended order and the record in the office of the circuit clerk prior to the expiration of the ten-day period during which exceptions can be filed.

(d) A copy of any supporting documents or a summary of supporting documents, prepared or used by the bureau for child support enforcement attorney or an employee of the bureau for child support enforcement, and all documents introduced into evidence before the master, shall be made available to the attorney for each party and to each of the parties before the circuit court takes any action on the recommendation.

(e) All recommended orders of the master shall include the statement of findings of fact and conclusions of law, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and the appropriate sanction, relief or denial thereof. In every action where visitation is recommended, the master shall specify a schedule for visitation by the noncustodial parent: Provided, That with respect to any existing order which provided for visitation but which does not provide a specific schedule for visitation by the noncustodial parent, upon motion of any party, notice of hearing and hearing, the master shall recommend an order
which provides a specific schedule of visitation by the noncustodial parent.

§48-30-203. Form of notice of recommended order.

IN THE CIRCUIT COURT OF

___________ COUNTY, WEST VIRGINIA,

Petitioner,

vs. CIVIL ACTION NO. _____

Respondent.

NOTICE OF RECOMMENDED ORDER

The undersigned family law master hereby recommends the enclosed order to the circuit court of ________ county. If you wish to file objections to this decision, you must file a written petition in accordance with the provisions of section 48-30-302 of the West Virginia Code within a period of ten days ending on _________, ____________, with the circuit clerk of county and send a copy to counsel for the opposing party or if the party is unrepresented to the party, and to the office of the family law master located at ________.

If no written petition for review is filed by ____________, __________, then the recommended order will be sent to the circuit judge assigned to this case. A recommended order which is not signed by a party, or counsel for a party who is represented, by the end of the ten-day period will still be sent to the circuit judge for entry.

YOUR FAILURE TO SIGN THE ORDER AS HAVING BEEN INSPECTED OR APPROVED WILL NOT DELAY THE ENTRY THEREOF.

Family Law Master
§48-30-204. Orders to be entered by circuit court exclusively.

1 With the exception of temporary support and custody orders entered by a master in accordance with the provisions of section 30-201 and section 1-304, and procedural orders entered pursuant to the provisions of section 30-102, an order imposing sanctions or granting or denying relief may not be made and entered except as authorized by law. Upon entry of a final order in any action for divorce, separate maintenance or annulment, the clerk of the circuit court shall deliver an attested copy of such order to the parties who have appeared in such action or their counsel of record by personal delivery or by first class mail.

PART 3. CIRCUIT COURT REVIEW.

§48-30-301. Circuit court review of master’s action or recommended order.

(a) A person who alleges that he or she will be adversely affected or aggrieved by a recommended order of a master is entitled to review of the proceedings. The recommended order of the master is the subject of review by the circuit court and a procedural action or ruling not otherwise directly reviewable is subject to review only upon the review of the recommended order by the circuit court.

(b) When a master’s action or recommended order is presented to the circuit court for review upon the petition of any party and such action or recommended order is subject to review, the family law master or circuit court shall enter a temporary support and custody order or otherwise provide for relief during the pendency of the review proceedings upon any party’s request therefor or on the master’s or court’s own
motion if the family law master or court deems such order or other relief to be fair and equitable.


(a) Within ten days after the master’s recommended order, any separate document with findings of fact and conclusions of law and the notice of recommended order is served on the parties as set forth in section 30-202, any party may file exceptions thereto in a petition requesting that the action by the master be reviewed by the circuit court. Failure to timely file the petition shall constitute a waiver of exceptions, unless the petitioner, prior to the expiration of the ten-day period, moves for and is granted an extension of time from the circuit court. At the time of filing the petition, a copy of the petition for review shall be served on all parties to the proceeding, in the same manner as pleadings subsequent to an original complaint are served under rule five of the rules of civil procedure.

(b) Not more than ten days after the filing of the petition for review, a responding party wishing to file a cross-petition that would otherwise be untimely may file, with proof of service on all parties, a cross-petition for review.

§48-30-303. Form of petition for review.

(a) The petition for review shall contain a list of exceptions in the form of questions presented for review, expressed in the terms and circumstances of the case, designating and pointing out the errors complained of with reasonable certainty, so as to direct the attention of the circuit court specifically to them, but without unnecessary detail. The statement of questions should be short and concise and should not be argumentative or repetitious. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly
11 included therein will be considered by the court. Parts of the
12 master's report not excepted to are admitted to be correct, not
13 only as regards the principles, but as to the evidence, upon
14 which they are founded.

15 (b) The circuit court may require, or a party may choose to
16 submit with the petition for review, a brief in support thereof,
17 which should include a direct and concise argument amplifying
18 the reasons relied upon for modification of the master's
19 recommended order and citing the constitutional provisions,
20 statutes and regulations which are applicable.

§48-30-304. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing of a
2 petition within which to file an answer disclosing any matter or
3 ground why the recommended order of the master should not be
4 modified by the court in the manner sought by the petition. The
5 judge may require, or a party may choose to submit with the
6 answer, a brief in opposition to the petition, which should
7 include a direct and concise argument in support of the master's
8 recommended order and citing the constitutional provisions,
9 statutes and regulations which are applicable.

10 (b) No motion by a respondent to dismiss a petition for
11 review will be received.

12 (c) Any party may file a supplemental brief at any time
13 while a petition for review is pending, calling attention to new
14 cases or legislation or other intervening matter not available at
15 the time of the party's last filing.

§48-30-305. Circuit court review of family law master's recom-
11ommended order.
(a) The circuit court shall proceed to a review of the recommended order of the family law master when:

(1) No petition has been filed within the time allowed, or the parties have expressly waived the right to file a petition;

(2) A petition and an answer in opposition have been filed, or the time for filing an answer in opposition has expired, or the parties have expressly waived the right to file an answer in opposition, as the case may be.

(b) To the extent necessary for decision and when presented, the circuit court shall decide all relevant questions of law, interpret constitutional and statutory provisions and determine the appropriateness of the terms of the recommended order of the family law master.

(c) The circuit court shall examine the recommended order of the family law master, along with the findings and conclusions of the family law master, and may enter the recommended order, may recommit the case, with instructions, for further hearing before the master or may, in its discretion, enter an order upon different terms, as the ends of justice may require. Conclusions of law of the family law master shall be subject to de novo review by the circuit court. The circuit court shall be held to the clearly erroneous standard in reviewing findings of fact. The circuit court shall not follow the recommendation, findings and conclusions of a master found to be:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(2) Contrary to constitutional right, power, privilege or immunity;
(3) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(4) Without observance of procedure required by law;

(5) Unsupported by substantial evidence; or

(6) Unwarranted by the facts.

(d) In making its determinations under this section, the circuit court shall review the whole record or those parts of it cited by a party. If the circuit court finds that a family law master's recommended order is deficient as to matters which might be affected by evidence not considered or inadequately developed in the family law master's recommended order, the court may recommit the recommended order to the family law master, with instructions indicating the court's opinion, or the circuit court may proceed to take such evidence without recommitting the matter.

(e) The order of the circuit court entered pursuant to the provisions of subsection (d) of this section shall be entered not later than ten days after the time for filing pleadings or briefs has expired or after the filing of a notice or notices waiving the right to file such pleading or brief.

(f) If a case is recommitted by the circuit court, the family law master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court shall enter appropriate temporary orders awarding custody, visitation, child support, spousal support or such other temporary relief as the circumstances of the parties may require.

PART 4. MISCELLANEOUS PROVISIONS.
§48-30-401. County commissions required to furnish offices for the family law master.

Each county commission of this state has a duty to provide premises for the family law master which are adequate for the conduct of the duties required of such master under the provisions of this chapter and which conform to standards established by rules promulgated by the supreme court of appeals. The administrative office of the supreme court of appeals shall pay to the county commission a reasonable amount as rent for the premises furnished by the county commission to the family law master and his or her staff pursuant to the provisions of this section.

§48-30-402. Budget of the family law master system.

The budget for the payment of the salaries and benefits of the family law masters and clerical and secretarial assistants shall be included in the appropriation for the supreme court of appeals. The family law master administration fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a special fund administered by the state auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of the family law master system. All agencies or entities receiving federal matching funds for the services of family law masters and their staff, including, but not limited to, the commissioner of the bureau for child support enforcement and the secretary of the department of health and human resources, shall enter into an agreement with the administrative office of the supreme court of appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family law masters and staff of the program shall be paid into the family law master administration fund. Said agreement shall provide for advance payments into the fund by such agencies,
from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

§48-30-403. Family court fund.

The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs received for the services of the office under this chapter to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "family court fund", which is hereby created. All moneys collected and received under this chapter and paid into the state treasury and credited to the "family court fund" shall be used by the administrative office of the supreme court of appeals solely for paying the costs associated with the duties imposed upon the family law masters under the provisions of this chapter which require activities by the family law masters which are not subject to being matched with federal funds or subject to reimbursement by the federal government. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

§48-30-404. Continuation of family law masters system.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares the family law masters system should be continued and reestablished as recreated in article two-a, chapter fifty-one of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.
§49-3-1. Consent by agency or department to adoption of child; statement of relinquishment by parent; petition to terminate parental rights.

(a)(1) Whenever a child welfare agency licensed to place children for adoption or the department of health and human resources has been given the permanent legal and physical custody of any child and the rights of the mother and the rights of the legal, determined, putative, outside or unknown father of the child have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or the department may consent to the adoption of the child pursuant to the provisions of article twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the department is required of the same persons whose consent or relinquishment is required under the provisions of section three hundred one, article twenty-two, chapter forty-eight of this code. The form of any relinquishment so required shall conform as nearly as practicable to the requirements established in section three hundred three, article twenty-two, chapter forty-eight, and all other provisions of that article providing for relinquishment for adoption shall govern the proceedings herein.

(3) For purposes of any placement of a child for adoption by the department, the department shall first consider the suitability and willingness of any known grandparent or grandparents to adopt the child. Once any such grandparents who are interested in adopting the child have been identified, the department shall conduct a home study evaluation, including home visits and individual interviews by a licensed social worker. If the department determines, based on the home study evaluation, that the grandparents would be suitable adoptive parents, it shall assure that the grandparents are offered the
(4) The department shall make available, upon request, for purposes of any private or agency adoption proceeding, preplacement and post-placement counseling services by persons experienced in adoption counseling, at no cost, to any person whose consent or relinquishment is required pursuant to the provision of article twenty-two, chapter forty-eight of this code.

(b)(1) Whenever the mother has executed a relinquishment pursuant to this section, and the legal, determined, putative, outsider or unknown father, as those terms are defined pursuant to the provisions of, part one, article twenty-two, chapter forty-eight of this code, has not executed a relinquishment, the child welfare agency or the department may, by verified petition, seek to have the father's rights terminated based upon the grounds of abandonment or neglect of said child. Abandonment may be established in accordance with the provisions of section three hundred six, article twenty-two, chapter forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the petition shall be served on any person entitled to parental rights of a child prior to its adoption who has not signed a relinquishment of custody of the child.

(3) In addition, notice shall be given to any putative, outsider or unknown father who has asserted or exercised parental rights and duties to and with the child and who has not relinquished any parental rights and such rights have not otherwise been terminated, or who has not had reasonable opportunity before or after the birth of the child to assert or exercise such rights: Provided, That if such child is more than
six months old at the time such notice would be required and such father has not asserted or exercised his parental rights and he knew the whereabouts of the child, then such father shall be presumed to have had reasonable opportunity to assert or exercise such rights.

(c)(1) Upon the filing of the verified petition seeking to have the parental rights terminated, the court shall set a hearing on the petition. A copy of the petition and notice of the date, time and place of the hearing on said petition shall be personally served on any respondent at least twenty days prior to the date set for the hearing.

(2) Such notice shall inform the person that his parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within twenty days of such service. In the case of any such person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person’s last known address, with instructions to forward; or (3) by publication. If personal service is not acquired, then if the person giving notice shall have any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as herein provided. Any such service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be
served. If the court determines that the whereabouts of the
97 person to be served cannot be ascertained and that due diligence
98 has been exercised to ascertain such person’s whereabouts, then
99 the court shall order service of such notice by publication as a
100 Class II publication in compliance with the provisions of article
101 three, chapter fifty-nine of this code, and the publication area
102 shall be the county where such proceedings are had, and in the
103 county where the person to be served was last known to reside.
104 In the case of a person under disability, service shall be made
105 on the person and his personal representative, or if there be
106 none, on a guardian ad litem.

(3) In the case of service by publication or mail or service
108 on a personal representative or a guardian ad litem, the person
109 shall be allowed thirty days from the date of the first publica-
110 tion or mailing of such service on a personal representative or
111 guardian ad litem in which to appear and defend such parental
112 rights.

(d) A petition under this section may be instituted in the
114 county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental
116 rights is guilty of the allegations set forth in the petition, the
117 court shall enter an order terminating his parental rights and
118 shall award the legal and physical custody and control of said
119 child to the petitioner.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

*§51-2A-10. Matters to be heard by a family law master.

(a) A chief judge of a circuit court shall refer to the family
law master the following matters for hearing:

*Clerk’s Note: This section was also amended by S. B. 437 (Chapter 95), which passed prior to this act.
(1) Actions to obtain orders of support brought under the provisions of section one hundred one, article fourteen, chapter forty-eight of this code;

(2) All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code, and any dependent claims related to such action regarding child support, custody and visitation;

(3) All petitions for writs of habeas corpus wherein the issue contested is child custody;

(4) All motions for temporary relief affecting child custody, visitation, child support, spousal support or domestic violence, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the family law master: Provided, That if the family law master determines, in his or her discretion, that the pleadings raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the family law master shall notify the appropriate circuit court of this fact and the circuit court may refer the case to a special commissioner chosen by the circuit court to serve in such capacity;

(5) All petitions for modification of an order involving child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate maintenance brought pursuant to articles three, four and five, chapter forty-eight of this code: Provided, That an action for divorce, annulment or separate maintenance which does not involve child custody or child support shall be heard by a circuit judge if, at the time of the filing of the action, the parties file a written property settlement agreement which has been signed by both parties;
(7) All actions wherein an obligor is contesting the enforcement of an order of support through the withholding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearage;

(8) All actions commenced under article sixteen, chapter forty-eight of this code or the interstate family support act of another state;

(9) Proceedings for the enforcement of support, custody or visitation orders;

(10) All actions to allocate custodial responsibility for a minor child, including actions brought pursuant to the uniform child custody jurisdiction act and actions brought to establish grandparent visitation; Provided, That any action instituted under article six, chapter forty-nine of this code shall be heard by a circuit judge;

(11) Civil contempt and direct contempts; Provided, That criminal contempts must be heard by a circuit judge; and

(12) On and after the first day of September, two thousand one, final hearings in domestic violence proceedings wherein a protective order is sought.

(b) On its own motion or upon motion of a party, the circuit court may revoke the referral of a particular matter to a family law master if the family law master is recused, if the matter is uncontested, or for other good cause, or if the matter will be more expeditiously and inexpensively heard by a circuit judge without substantially affecting the rights of parties.

CHAPTER 56. PLEADING AND PRACTICE.
ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-8. Priority of cases involving placement of children.

Any action or motion which involves a contested issue regarding the permanent or temporary placement of a minor child shall be given priority over any civil action before the court except actions in which trial is in progress and actions brought under article twenty-seven, chapter forty-eight of this code and shall be docketed immediately upon filing.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this state pursuant to the provisions of article two, chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this state:

(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication.
This subsection is in addition to the protection and privilege afforded pursuant to section three hundred one, article one, chapter forty-eight of this code.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

*§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.*

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in subsection (c) of this section, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and

(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

*Clerk’s Note: This section was also amended by S. B. 652 (Chapter 93) and H. B. 3131 (Chapter 65), which passed subsequent to this act.*
(b) For each divorce action instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such divorce action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code, an amount of fifty dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(c) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such divorce action as follows:

(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;
(2) Into the special revenue account of the state treasury, established pursuant to section twenty-four, article one, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code, an amount of seventy dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(d) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article.

(e) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(f) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and prison development fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.
AN ACT to amend and reenact section twelve, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred and thirty-one, as amended, relating to allowing immediate distribution to the alternate payee named in a qualified domestic relations order.

Be it enacted by the Legislature of West Virginia:

That section twelve, article seven-b, 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 7B. TEACHER'S DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-12. Retirement, commencement of annuity payments, payments under a qualified domestic relations order.

(a) Subject to the provisions of section twelve-a of this article, an employee attaining fifty-five years of age, may elect to take retirement by notifying the board or its designee in writing of his or her intention to retire. The notice of retirement must be received by the board or its designee no fewer than sixty days prior to the effective date of retirement. Retirement
payments shall commence within thirty days of the retirement date under the payment option selected by the employee.

(b) An alternate payee named in a qualified domestic relations order may elect to receive a distribution awarded from this plan. If the alternate payee elects, the board or its designee shall promptly compute the amount due without regard to whether the employee is receiving benefits at the time of election. After the amount due has been computed, the board shall promptly initiate payments to the alternate payee.

(c) For purposes of this section, the term “qualified domestic relations order” means a “qualified domestic relations order” as defined in Section 414(p) of the Internal Revenue Code with respect to government plans.

CHAPTER 93

(Com. Sub. for S. B. 652 — By Senator Wooton)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
said chapter; to amend and reenact sections one hundred three and one hundred four, article eight of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six hundred four; to amend and reenact sections one hundred one, one hundred four, one hundred five, one hundred six, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve, one hundred thirteen and one hundred fourteen, article twelve of said chapter; to further amend said article by adding thereto three new sections, designated sections one hundred fifteen, one hundred sixteen and one hundred seventeen; to amend and reenact sections four hundred one, four hundred two, four hundred three, four hundred four, five hundred one, five hundred two, five hundred three, eight hundred one and eight hundred two, article thirteen of said chapter; to further amend said article by adding thereto a new section, designated section eight hundred three; to amend and reenact section seven hundred one, article fourteen of said chapter; to amend and reenact section one hundred five, article eighteen of said chapter; to amend and reenact section one hundred three, article nineteen of said chapter; to amend and reenact section one hundred one, article twenty-four of said chapter; to amend and reenact sections two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, three hundred one, three hundred nine, four hundred one, four hundred two, four hundred three, five hundred five, five hundred ten, nine hundred one, nine hundred two, nine hundred three, one thousand one, eleven hundred one and eleven hundred four, article twenty-seven of said chapter; to further amend said article by adding thereto three new sections, designated sections two hundred seven, two hundred eight and two hundred nine; to amend and reenact section seventeen, article one, chapter fifty-two of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating generally to substantive revisions in the recodification of domestic relations law; providing for the calculation of interest on
support obligations, and the award or approval of prejudgment interest in a domestic relations action; providing for proceedings in contempt; providing for the collection of child or spousal support by collection agencies; authorizing court to enter protective order as temporary relief in divorce proceeding; providing for revising or altering an order concerning the maintenance of parties to an action for divorce or separate maintenance; describing the effect of fault or misconduct on an award for spousal support; eliminating the bar that denies spousal support if both parties prove a grounds for divorce, or if a party determined to be at fault has committed adultery, been convicted of a felony subsequent to the marriage or has abandoned or deserted for six months; creating a parent education and mediation fund in the state treasury; defining certain terms applicable to medical support enforcement; providing for use of the national medical support notice; revising terminology used in child support awards; making technical revisions to worksheets; revising archaic terminology; requiring enrollment of the child in a health-care coverage plan; establishing the obligation of an employer to transfer the national medical support notice to the appropriate plan; establishing notice requirements for certain newly hired employees; requiring a notice upon termination of a parent’s employment; making the liability of a parent for employee contributions subject to appropriate enforcement; providing a parent with a description of the coverage available, and other documents; requiring notice of coverage to the IV-D agency; describing the employer’s duties upon service of a national medical support notice; describing the employer’s duties where a parent is required by court or administrative order to provide health care coverage; providing that the signature of the custodian for a child constitutes a valid authorization to an insurer; describing the obligations of an insurer; providing for the transfer of notice upon an obligated parent’s change of unemployment; establishing eligibility of a child until emancipation or termination of the child from coverage; providing for contempt and other
remedies if an obligated parent fails to comply with an order to provide insurance coverage; establishing a mandatory date for the use of the national medical support notice; providing for the payment of arrearages or reimbursement support when the obligor is not paying a current child support obligation; setting forth the general duties and powers of the bureau for child support enforcement; setting forth the duties of bureau for child support enforcement attorneys; providing for the jurisdiction of courts over paternity proceedings; requiring that a copy of the complaint be served on the person whose name appears as the father on the birth certificate if the proceeding is brought against another person; defining and redefining terms used in domestic violence proceedings; revising procedures for domestic violence petitions; providing for emergency protective orders; providing for hearings on final protective orders; establishing appeal process and standard of review; providing for proceedings in contempt and criminal complaints; establishing misdemeanor offense and criminal penalties; authorizing arrest for violations; requiring forms; requiring judicial education; providing for the manner in which jury costs are to be deposited in the state treasury; increasing certain fees to be charged by the clerk of the circuit court; and providing for the disposition of filing fees in divorce and other civil actions.

Be it enacted by the Legislature of West Virginia:

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

48. Domestic Relations.
52. Juries.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 48. DOMESTIC RELATIONS.

Article
1. General Provisions; Definitions.
5. Divorce.
8. Spousal Support.
12. Medical Support.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

Part 2. Definitions.

§48-1-222. Domestic relations action defined.
§48-1-233.1. Mediation defined.
§48-1-233.2. Mediator defined.
§48-1-235.1. Parent defined.
§48-1-235.2. Parenting functions defined.
§48-1-235.3. Parenting plan defined.
§48-1-235.4. Permanent parenting plan defined.
§48-1-235.5. Rehabilitative spousal support defined.
§48-1-239. Shared parenting plan.
§48-1-302. Calculation of interest.
§48-1-307. Collection of child or spousal support by collection agencies.

*§48-1-222. Domestic relations action defined.

1 “Domestic relations action” means an action:

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed subsequent to this act.
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2 (1) To obtain a divorce;

3 (2) To have a marriage annulled;

4 (3) To be granted separate maintenance;

5 (4) To establish paternity;

6 (5) To establish and enforce child or spousal support, including actions brought under the provisions of the uniform interstate family support act; and

7 (6) To allocate custodial responsibility and determine decision-making responsibility, or to otherwise determine child custody, as in an action petitioning for a writ of habeas corpus wherein the issue is child custody.

§48-1-233.1. Mediation defined.

1 "Mediation" means a method of alternative dispute resolution in which a neutral third person helps resolve a dispute. Mediation is an informal, non-adversarial process whereby the neutral third person, the mediator, assists parties to a dispute to resolve, by agreement, some or all of the differences between them. The mediator has no authority to render a judgment on any issue of the dispute.

§48-1-233.2. Mediator defined.

1 "Mediator" means a neutral third person who interposes between two contending parties, with their consent, for the purpose of assisting them in settling their differences.

§48-1-235.1. Parent defined.

1 "Parent" means a legal parent as defined in section 1-232 unless otherwise specified.
§48-1-235.2. Parenting functions defined.

“Parenting functions” means tasks that serve the needs of the child or the child’s residential family. Parenting functions include caretaking functions, as defined in section 1-210. Parenting functions also include functions that are not caretaking functions, including:

(A) Provision of economic support;

(B) Participation in decision-making regarding the child’s welfare;

(C) Maintenance or improvement of the family residence, home or furniture repair, home-improvement projects, yard work and house cleaning;

(D) Financial planning and organization, car repair and maintenance, food and clothing purchasing, cleaning and maintenance of clothing, and other tasks supporting the consumption and savings needs of the family; and

(E) Other functions usually performed by a parent or guardian that are important to the child’s welfare and development.

§48-1-235.3. Parenting plan defined.

“Parenting plan” means a temporary parenting plan as defined in subdivision (22) of this section or a permanent parenting plan as defined in subdivision (17) of this section.

§48-1-235.4. Permanent parenting plan defined.

“Permanent parenting plan” means a plan for parenting a child that is incorporated into a final order or subsequent modification order in a domestic relations action. The plan
principally establishes, but is not limited to, the allocation of
custodial responsibility and significant decision-making
responsibility and provisions for resolution of subsequent
disputes between the parents.

§48-1-235.5. Rehabilitative spousal support defined.

“Rehabilitative spousal support” means spousal support
payable for a specific and determinable period of time, designed
to cease when the payee is, after the exercise of reasonable
efforts, in a position of self-support.

*§48-1-239. Shared parenting defined.

(a) “Shared parenting” means either basic shared parenting
or extended shared parenting.

(b) “Basic shared parenting” means an arrangement under
which one parent keeps a child or children overnight for less
than thirty-five percent of the year and under which both
parents contribute to the expenses of the child or children in
addition to the payment of child support.

(c) “Extended shared parenting” means an arrangement
under which each parent keeps a child or children overnight for
more than thirty-five percent of the year and under which both
parents contribute to the expenses of the child or children in
addition to the payment of child support.


*§48-1-302. Calculation of interest.

(a) If an obligation to pay interest arises under this chapter,
the rate of interest is that specified in section 56-6-31 of this
code. Interest accrues only upon the outstanding principal of

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.
such obligation. On and after the ninth day of June, one thousand nine hundred ninety-five, this section will 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) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), rule eleven 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 the provisions of this subsection may only be filed after the first

(a) Upon a verified petition for contempt, notice of hearing and hearing, if the petition alleges criminal contempt or the court informs the parties that the matter will be treated and tried as a criminal contempt, the matter shall be tried in the circuit court before a jury, unless the party charged with contempt shall knowingly and intelligently waive the right to a jury trial with the consent of the court and the other party. If the jury, or the circuit court sitting without a jury, shall find the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of articles three, four, five, eight, nine, eleven, twelve, fourteen and fifteen, as charged in the petition, the court may find the person to be in criminal contempt and may commit such person to the county jail for a determinate period not to exceed six months.

(b) If trial is had under the provisions of subsection (a) of this section and the court elects to treat a finding of criminal contempt as a civil contempt, and the matter is not tried before a jury and the court finds the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of articles three, four, five, eight, nine, eleven, twelve, fourteen and fifteen, and if the court further finds the person has the ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt. If the contemnor fails or refuses to purge himself of contempt, the court may confine the contemnor to the county jail for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself, whichever shall first occur. If the petition alleges civil contempt, the matter shall be heard by the family court. The family court has the same power

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
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and authority as the circuit court under the provisions of this section for criminal contempt proceedings which the circuit court elects to treat as civil contempt.

(c) In the case of a charge of contempt based upon the failure of the defendant to pay alimony, child support or separate maintenance, if the court or jury finds that the defendant did not pay because he was financially unable to pay, the defendant may not be imprisoned on charges of contempt of court.

(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this article, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment. Following any hearing wherein the court finds that a party is in arrears in the payment of alimony, child support or separate maintenance, the court may, if sufficient assets exist, require security to ensure the timely payment of future installments.

(e) At any time during a contempt proceeding, the court may enter an order to attach forthwith the body of, and take into custody, any person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court. Such order of attachment shall require the person to be brought forthwith before the court or the judge thereof in any county in which the court may then be sitting.

§48-1-307. Collection of child or spousal support by collection agencies.

(a) Any person attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from
a resident of this state is subject to the provisions of article
sixteen, chapter forty-seven of this code, and the provisions of
this section, and is otherwise subject to the jurisdiction of this
state.

(b) The amount of delinquent child or spousal support or
arrearage established by order of a court of competent jurisdic-
tion in this state is not subject to waiver or compromise, either
by agreement of the parties or by a collection agency acting on
behalf of a party and may only be modified by an order of a
court of competent jurisdiction.

(c) No child or spousal support or arrearage of child or
spousal support collected by the state IV-D agency may be
redirected to any collection agency.

(d) No collection agency attempting to collect a child or
spousal support obligation or arrearage on behalf of a resident
or from a resident of this state may include any funds collected
by a IV-D agency in the amount from which their fee is
determined or collected.

(e) No collection agency, other than an attorney licensed to
practice law in this state, attempting to collect a child support
or spousal support obligation or arrearage may engage in
conduct which is considered the practice of law, including, but
not limited to:

1. The performance of legal services, the offering of legal
advice or the making of a false representation, directly or by
implication, that a person is an attorney;

2. Any communication with persons in the name of an
attorney or upon stationery or other written matter bearing an
attorney's name; and
(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

(f) No collection agency may collect or attempt to collect any money alleged to be due and owing by any threat, coercion or attempt to coerce, including, but not limited to:

(1) The use, or the express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, of any crime, or of any conduct which, if true, would tend to disgrace the other person or in any way subject them to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a person is willfully refusing to pay a just claim, or the threat to make such false accusations;

(4) The threat that nonpayment of an alleged claim will result in the arrest of any person, or of the taking of any other action requiring judicial sanction, without informing the person that there must be in effect a court order permitting the action before it can be taken; and

(5) The threat to take any action prohibited by this section or other law regulating the conduct of a collection agency.

(g) No collection agency may unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any child or spousal support obligation or arrearage, including, but not limited to:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the listener or reader;
(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

(h) No collection agency may unreasonably publicize information relating to any alleged child or spousal support obligation or arrearage, including, but not limited to:

(1) The communication to any employer or his or her agent of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication, or communication of information relating to a child or spousal support obligation or arrearage to any relative or family member of the obligor, except through proper legal action or process or at the express and unsolicited request of the obligor;

(3) The disclosure, publication or communication of any information relating to an obligor's child or spousal support obligation or arrearage to any other person other than a credit reporting agency, by publishing or posting any list of persons, commonly known as "deadbeat lists," or in any manner other than through proper legal action, process or proceeding; and
(4) The use of any form of communication to the obligor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address and telephone number of the collection agency.

(i) No collection agency may use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning support obligors, including, but not limited to:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the collection agency's business, company or organization;

(2) Any false representation that the collection agency has in its possession information or something of value for the obligor with the underlying purpose of soliciting or discovering information about the person;

(3) The failure to clearly disclose the name of the person to whom the claim is owed, at the time of making any demand for money;

(4) Any false representation or implication of the character, extent or amount of a claim against an obligor or of the status of any legal proceeding;

(5) Any false representation or false implication that any collection agency is vouched for, bonded by, affiliated with an agency, instrumentality, agent or official of this state or of the federal or local government;

(6) The use, distribution or sale of any written communication which simulates or is falsely represented to be a document
authorized, issued or approved by a court, an official or any
other legally constituted or authorized authority, or which
creates a false impression about its source, authorization or
approval;

(7) Any representation that an existing obligation of the
obligor may be increased by the addition of attorney’s fees,
investigation fees, service fees or any other fees or charges
when in fact the fees or charges may not legally be added to the
existing obligation; and

(8) Any false representation or false impression about the
status or true nature of the services rendered by the collection
agency.

(j) No collection agency may use unfair or unconscionable
means to collect or attempt to collect any claim, including, but
not limited to:

(1) The collection of or the attempt to collect any interest
in excess of that interest authorized by the provisions of this
chapter, or other charge, fee or expense incidental to the
principal obligation that exceeds ten percent of the principal
amount from an obligor or obligee; and

(2) Any communication with an obligor whenever it
appears the obligor is represented by an attorney and the
attorney’s name and address are known, or could be easily
ascertained, unless the attorney fails to answer correspondence,
return telephone calls or discuss the obligation in question, or
unless the attorney and the obligor consent to direct communi-
cation.

(k) No collection agency may use, distribute, sell or prepare
for use any written communication which violates or fails to
conform to United States postal laws and regulations.
(l) No collection agency may place a telephone call or otherwise communicate by telephone with an obligor at any place, including a place of employment, falsely stating that the call is "urgent" or an "emergency".

(m) No collection agency may attempt to collect any portion of a fee from any money collected by any other entity or authority. The collection agency may only collect a fee from funds procured solely through its collection activities.

(n) A collection agency must provide the state IV-D agency with an accounting of any money collected and forwarded to the obligee as child support, spousal support, or arrearages every sixty days until the collection agency ceases all collection activity.

(o) Any resident of this state who contracts for services with a collection agency to collect child support, spousal support arrearages may, upon thirty days written notice, cancel the contract for collection. The notice must be mailed to the collection agency by first class mail. All contracts signed by residents of this state must include written notification of this right of cancellation.

(p) Any person who violates the provisions of this section is subject to the penalties set forth in section 47-16-5 and section 11-12-9.

(q) Any person who violates the provisions of this section is liable to the injured party in a civil action. Additionally, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars for each separate incident.
(r) For any action filed pursuant to this section alleging illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court, in its discretion, may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the injured party. Upon a finding by the court that an action filed pursuant to this section on the grounds of illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice was brought in bad faith and for the purposes of harassment, the court may award the defendant reasonable attorney fees.

ARTICLE 5. DIVORCE.

*§48-5-509. Enjoining abuse, emergency protective order.

(a) The court may enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. This order may enjoin the offending party from:

(1) Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

(2) Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

(3) Harassing or verbally abusing the other in a public place.

(b) Any order entered by the court to protect a party from abuse may grant any other relief that may be appropriate for inclusion under the provisions of article twenty-seven of this chapter.

(c) The court, in its discretion, may enter a protective order, as provided in article twenty-seven of this chapter, as part of the temporary relief in a divorce action.

*Clerk's Note:  This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
ARTICLE 8. SPOUSAL SUPPORT.

§48-8-103. Payment of spousal support.
§48-8-104. Effect of fault or misconduct on award of spousal support.

*§48-8-103. Payment of spousal support.

(a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party. Payments of spousal support are to be ordinarily made from a party’s income, but when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of spousal support shall not be disproportionate to a party’s ability to pay as disclosed by the evidence before the court.

(b) At any time after the entry of an order pursuant to the provisions of this article, the court may, upon motion of either party, revise or alter the order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, issuing it forthwith, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice.

*§48-8-104. Effect of fault or misconduct on award of spousal support.

In determining whether spousal support is to be awarded, or in determining the amount of spousal support, if any, to be awarded, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of the fault or misconduct as a contributing factor to the deterioration of the marital relationship.

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
ARTICLE 9. CUSTODY OF CHILDREN.


There is hereby created in the state treasury a special revenue account, designated the "parent education and mediation fund". The moneys of the fund shall be expended by the administrator of the supreme court of appeals for parent education and mediation programs.

ARTICLE 12. MEDICAL SUPPORT.

§48-12-101. Definitions applicable to medical support enforcement.

§48-12-104. Use of national medical support notice; employer to enroll child and withhold premium.

§48-12-105. Employer's obligation to transfer notice to appropriate plan.

§48-12-106. Notice to requirements for certain newly-hired employees.

§48-12-107. Notice requirement upon termination of parent.

§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.

§48-12-109. Custodial parent to receive coverage information, documents.

§48-12-110. Employer, union to notify IV-D agency within forty days of receipt of notice.

§48-12-111. Employer's duties upon service of national medical support notice.

§48-12-112. Employer's duties where court-ordered coverage available.

§48-12-113. Signature of custodian of child is valid authorization to insurer; insurer's obligations.

§48-12-114. Notice to be transferred on parent's change of employment.

§48-12-115. Insurer to notify custodian when obligated parent's employment is terminated or coverage is denied, modified or terminated; explanation of conversion privileges; employer to notify bureau of termination.

§48-12-116. Child is eligible for coverage until emancipated; remedies available if obligated parent fails to provide ordered coverage; failure to maintain coverage is basis for modification of support order.

§48-12-117. Mandatory date for use the national medical support notice.

*§48-12-101. Definitions applicable to medical support enforcement.

For the purposes of this article:

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
“Custodian for the children” means a parent, legal
guardian, committee or other third party appointed by court
order as custodian of a child or children for whom child support
is ordered.

“Obligated parent” means a natural or adoptive parent
who is required by agreement or order to pay for insurance
coverage and medical care, or some portion thereof, for his or
her child.

“Insurance coverage” means coverage for medical,
dental, including orthodontic, optical, psychological, psychiatric or other health care service.

“Child” means a child to whom a duty of child support
is owed.

“Medical care” means medical, dental, optical, psychological, psychiatric or other health care service for children in
need of child support.

“Insurer” means any company, health maintenance
organization, self-funded group, multiple employer welfare
arrangement, hospital or medical services corporation, trust,
group health plan, as defined in 29 U.S.C. § 1167, Section
607(1) of the Employee Retirement Income Security Act of
1974 or other entity which provides insurance coverage or
offers a service benefit plan.

“National medical support notice” means the written
notice described in 29 U.S.C. §1169 (a)(5)(C) and 42 U.S.C.
§666 (a)(19), and issued as a means of enforcing the health care
coverage provisions in a child support order for children whose
parent or parents are required to provide health-care coverage
through an employment-related group health plan. This notice
is considered under ERISA to be a qualified medical child support order (QMSO).

"Qualified medical child support order" means a medical child support order which creates or recognizes the existence of an alternate recipient’s right to, or assigns to an alternate recipient the right to, receive benefits from which a participant or beneficiary is eligible under a group health plan. A qualified medical child support order must include the name and the last known mailing address, if any, of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of the IV-D agency may be substituted for the mailing address of any alternate recipient, a reasonable description of the type of coverage provided to each alternate recipient, or the manner in which the type of coverage is determined, and the time period for which the order applies.

*§48-12-104. Use of national medical support notice; employer to enroll child and withhold premium.*

(a) All child support orders which include a provision for health care coverage of a child shall be enforced, where appropriate, through the use of the national medical support notice, as set forth in 42 U.S.C. §666 (a)(19) and 29 U.S.C. §1169 (a)(5)(C) et seq.

(b) Unless alternative coverage is permitted in any order by a court of competent jurisdiction, in any case in which a parent is required pursuant to a child support order to provide the health care coverage and the employer of the parent is known to the IV-D agency, the IV-D agency shall use the national medical support notice to give notice of the provision for the health care coverage of the child to the employer. The employer shall enroll the child as a beneficiary in the group insurance

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
14 plan and withhold any required premium from the obligated
15 parent's income or wages, and remit any amount withheld for
16 the premium directly to the plan.

*48-12-105. Employer's obligation to transfer notice to appropriate plan.

1 Within twenty business days after the date of receipt of the
2 national medical support notice, the employer shall transfer the
3 notice, excluding the severable employer withholding notice
4 described in section 401 (b)(2)(C) of the Child Support Perform-
5 ance and Incentive Act of 1998, to the appropriate plan
6 providing any health care coverage for which the child is
7 eligible.

*§48-12-106. Notice requirements for certain newly-hired employees.

1 In any case in which the parent is a newly hired employee
2 who is reported to the state directory of new hires pursuant to
3 section 18-125 of this chapter, and if the bureau for child
4 support enforcement is currently providing services for this
5 case, the agency shall issue, where appropriate, the national
6 medical support notice, together with an income withholding
7 notice issued pursuant to section 14-405 of this chapter, within
8 two days after the date of the entry of the employee in the
9 directory.

*§48-12-107. Notice requirement upon termination of parent.

1 In any case in which the employment of the parent with any
2 employer who received a national medical support notice is
3 terminated, the employer is required to notify the IV-D agency
4 of the termination, within fourteen days of the termination, and
5 shall provide the bureau for child support enforcement with the
6 obligor's last known address at the time of termination.

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.

Any liability a parent may have for employee contributions required under the plan for enrollment of the child is subject to appropriate enforcement unless the parent contests the enforcement based upon a mistake of fact, except that if enforcement of both the full amount of cash child support and the full amount of medical support violates the application provisions of 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act, then the current month’s cash child support shall receive priority, and shall be deducted in full prior to any deduction being made for payment of either current medical support or health insurance premiums. If the employee contests the withholding in the manner prescribed within the notice, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

§48-12-109. Custodial parent to receive coverage information, documents.

Within forty business days after the date of the national medical support notice, the plan administrator shall provide to the custodial parent a description of the coverage available and any forms or documents, including an insurance enrollment card, to effectuate the coverage.

§48-12-110. Employer, union to notify IV-D agency within forty days of receipt of notice.

Within forty days of receipt of a national medical support notice, the obligated parent’s employer, multiemployer trust or union shall notify the IV-D agency with respect to whether coverage for the child is available, and if so, whether the child is covered under the plan, the effective date of the coverage and the name of the insurer.

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
§48-12-111. Employer's duties upon service of national medical support notice.

(a) Upon service of the national medical support notice 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, unless the child is already enrolled in this plan.

(b) 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. If the obligated parent is not enrolled for insurance coverage, the employer shall promptly report the availability of plans to the IV-D agency. The IV-D agency, in consultation with parent, shall promptly select the most appropriate plan, considering both the health needs of the child and the cost to the parents, and shall notify the plan administrator and the parties of the selection.

(c) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in section 12-115 of this chapter.

§48-12-112. Employer's duties where court-ordered coverage available.

(a) 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;

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
(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 bureau for child support enforcement;

(3) Not to disenroll or eliminate coverage of the child unless the employer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect;

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(C) The employer eliminated family health coverage for all of its employees; and

(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.

*§48-12-113. Signature of custodian of child is valid authorization to insurer; insurer's obligations.

(a) 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.

(b) No insurer, employer or multiemployer trust in this state may refuse to honor a claim for a covered service when the

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

(c) 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.

(d) All insurers in this state shall comply with the provisions of section 33-15-16 and section 33-16-11 of this code 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.

§48-12-114. Notice to be transferred on parent’s change of employment.

Where an obligated parent changes employment and the new employer provides the obligated parent’s health care coverage, the bureau for child support enforcement shall transfer to the new employer notice of the obligated parent’s duty to provide health care coverage by use of the national medical support notice.

§48-12-115. Insurer to notify custodian when obligated parent’s employment is terminated or coverage is denied, modified or terminated; explanation of conversion privileges; employer to notify bureau of termination.

When an order for insurance coverage for a child pursuant to this article 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

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
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. In any case in
which the employment of the obligated parent to provide
insurance is terminated, the employer shall notify the bureau for
child support enforcement of the termination.

§48-12-116. Child is eligible for coverage until emancipated;
remedies available if obligated parent fails to
provide ordered coverage; failure to maintain
coverage is basis for modification of support order.

(a) 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.

(b) 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 subdivision (4)
of this subsection;

(2) Enter an order for a sum certain against the obligated
parent for the cost of medical care for the child and any
insurance premiums paid or provided for the child during any
period in which the obligated parent failed to provide the
required coverage;

(3) In the alternative, other enforcement remedies available
under sections 14-2, 14-3 and 14-4 of this chapter, 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 bureau for child support enforcement 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 the 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.

(c) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need, and provides a basis for modification of the child support order.

§48-12-117. Mandatory date for use the national medical support notice.

Provisions of this article which require the use of the national medical support notice are not mandatory until April 1, 2002.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

Part 4. Support in Basic Shared Parenting Cases.

§48-13-401. Basic child support obligation in basic shared parenting.
§48-13-402. Division of basic child support obligation in basic shared parenting.
§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

§48-13-404. Additional calculation to be made in basic shared parenting cases.


§48-13-503. Split physical custody adjustment.

§48-13-801. Tax exemption for child due support.

§48-13-802. Investment of child support.

§48-13-803. Reimbursement or arrearage only support.


1 For basic shared parenting cases, the total child support obligation consists of the basic child support obligation plus the child’s share of any unreimbursed health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court less any extraordinary credits agreed to by the parents or ordered by the court.

*§48-13-402. Division of basic child support obligation in basic shared parenting.

1 For basic shared parenting cases, the total basic child support obligation is divided between the parents in proportion to their income. From this amount is subtracted the payor’s direct expenditures of any items which were added to the basic child support obligation to arrive at the total child support obligation.

*§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

1 Child support for basic shared parenting cases shall be calculated using the following worksheet:

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
WORKSHEET A: BASIC SHARED PARENTING

IN THE FAMILY COURT OF ________ COUNTY, WEST VIRGINIA
CASE NO. _________

Mother: _______________ SS No.: ________ Primary Custodial parent? □ Yes □ No

Father: _______________ SS No.: ________ Primary Custodial parent? □ Yes □ No

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
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</thead>
<tbody>
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</tbody>
</table>

**PART I. CHILD SUPPORT ORDER**

1. MONTHLY GROSS INCOME
   (Exclusive of overtime compensation)
   a. Minus preexisting child support payment
      - -
   b. Minus maintenance paid
      - -
   c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)
      + +
   d. Additional dependents deduction

2. MONTHLY ADJUSTED GROSS INCOME
   $ $ $

3. PERCENTAGE SHARE OF INCOME
   (Each parent's income from line 2 divided by Combined Income)
   % % 100%

4. BASIC OBLIGATION
   (Use Line 2 combined to find amount from schedule.)
   $
5. ADJUSTMENTS (Expenses paid directly by each parent)
   a. Work-Related Child Care Costs
      Adjusted for Federal Tax Credit
      (0.75 x actual work-related child care costs.) $ $ 
   b. Extraordinary Medical Expenses (Uninsured only) and
      Children's Portion of Health Insurance Premium Costs. $ $ 
   c. Extraordinary Expenses
      (Agreed to by parents or by order of the court.) $ $ 
   d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.) 
   e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.) $ $ $ 

6. TOTAL SUPPORT OBLIGATION
   (Add line 4 and line 5e Combined.) $ 

7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.) $ $ 

8. PAYOR PARENT ADJUSTMENT
   (Enter payor parent's line 5e.) $ $ 

9. RECOMMENDED CHILD SUPPORT ORDER
   (Subtract line 8 from line 7 for the payor parent only. Leave payee parent column blank. $ $ 

PART II. ABILITY TO PAY CALCULATION
   (Complete if the payor parent's adjusted monthly gross income is below $1,550.)
### Table

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<tr>
<td>10.</td>
<td>Spendable Income <em>(0.80 x line 2 for payor parent only.)</em></td>
</tr>
<tr>
<td>11.</td>
<td>Self Support Reserve</td>
</tr>
<tr>
<td>12.</td>
<td>Income Available for Support <em>(Line 10 - line 11. If less than $50, then $50)</em></td>
</tr>
<tr>
<td>13.</td>
<td>Adjusted Child Support Order <em>(Lessor of Line 9 and Line 12.)</em></td>
</tr>
</tbody>
</table>

Comments, calculations, or rebuttals to schedule or adjustments if payor parent directly pays extraordinary expenses.

**PREPARED BY:**

**Date:**

---

**§48-13-404. Additional calculation to be made in basic shared parenting cases.**

In cases where the payor parent’s adjusted gross income is below one thousand five hundred fifty dollars per month, an additional calculation in Worksheet A, Part II shall be made. This additional calculation sets the child support order at whichever is lower.

1. Child support at the amount determined in Part I; or
2. The difference between eighty percent of the payor parent’s adjusted gross income and five hundred dollars, or fifty dollars, whichever is more.

**PART 5. SUPPORT IN EXTENDED SHARED PARENTING OR SPLIT PHYSICAL CUSTODY CASES.**

**§48-13-501. Extended shared parenting adjustment.**

1. Child support for cases with extended shared parenting is calculated using Worksheet B. The following method is used

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*Clerk’s Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
only for extended shared parenting: That is, in cases where each
parent has the child for more than one hundred twenty-seven
days per year (thirty-five percent).

(1) The basic child support obligation is multiplied by 1.5
to arrive at a shared parenting basic child support obligation.
The shared parenting basic child support obligation is apportioned to each parent according to his or her income. In turn, a
child support obligation is computed for each parent by
multiplying that parent's portion of the shared parenting child
support obligation by the percentage of time the child spends
with the other parent. The respective basic child support
obligations are then offset, with the parent owing more basic
child support paying the difference between the two amounts.
The transfer for the basic obligation for the parent owing less
basic child support shall be set at zero dollars.

(2) Adjustments for each parent's additional direct expenses
on the child are made by apportioning the sum of the parent's
direct expenditures on the child's share of any unreimbursed
child health care expenses, work-related child care expenses
and any other extraordinary expenses agreed to by the parents
or ordered by the court less any extraordinary credits agreed to
by the parents or ordered by the court to each parent according
to their income share. In turn each parent's net share of addi-
tional direct expenses is determined by subtracting the parent's
actual direct expenses on the child's share of any unreimbursed
child health care expenses, work-related child care expenses
and any other extraordinary expenses agreed to by the parents
or by the court less any extraordinary credits agreed to by the
parents or ordered by the court from their share. The parent
with a positive net share of additional direct expenses owes the
other parent the amount of his or her net share of additional
direct expenses. The parent with zero or a negative net share of
additional direct expenses owes zero dollars for additional direct expenses.

(3) The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subdivisions (1) and (2) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.


Child support for extended shared parenting cases shall be calculated using the following worksheet:

**WORKSHEET B: EXTENDED SHARED PARENTING**

IN THE FAMILY COURT OF ____________ COUNTY, WEST VIRGINIA
CASE NO. ____________

Mother: ___________________ SS No.: ____________
Father: ___________________ SS No.: ____________

<table>
<thead>
<tr>
<th>Children</th>
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<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
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**PART I. BASIC OBLIGATION**

<table>
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<tr>
<th>Item</th>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
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<tbody>
<tr>
<td>1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>a. Minus preexisting child support payment</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>b. Minus maintenance paid</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

*Clerk's Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)

d. Additional dependent deduction

<table>
<thead>
<tr>
<th>PART II. SHARED PARENTING ADJUSTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Shared Parenting Basic Obligation</td>
</tr>
<tr>
<td>(line 4 x 1.50)</td>
</tr>
<tr>
<td>6. Each Parent's Share (Line 5 x each parent's line 3)</td>
</tr>
<tr>
<td>7. Overnights with Each Parent (must total 365)</td>
</tr>
<tr>
<td>8. Percentage with Each Parent (Line 7 divided by 365)</td>
</tr>
<tr>
<td>9. Amount Retained (Line 6 x line 8 for each parent)</td>
</tr>
<tr>
<td>10. Each Parent's Obligation (Line 6 - line 9)</td>
</tr>
<tr>
<td>11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter $0 for other parent.)</td>
</tr>
</tbody>
</table>

PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount 1</th>
<th>Amount 2</th>
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<tbody>
<tr>
<td>12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>(0.75 x actual work-related child care costs.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12b. Extraordinary Medical Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>12e. Total Adjustments (For each column, add 12a, 12b, and 12c. Subtract line 12d. Add the parent’s totals together for Combined amount.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>13. Each Parent’s Share of Additional Expenses (Line 3 x line 12e Combined.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>14. Each Parent’s Net Share of Additional Direct Expenses (Each parent’s line 13-line 12e. If negative number, enter $0)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter $0 for other parent.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td><strong>PART IV. RECOMMENDED CHILD SUPPORT ORDER</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.)</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>
**§48-13-503. Split physical custody adjustment.**

In cases with split physical custody, the court shall use Worksheet A as set forth in section 13-403 to calculate a separate child support order for each parent based on the number of children in that parent’s custody. Instead of transferring the calculated orders between parents, the two orders are offset. The difference of the two orders is the child support order to be paid by the parent with the higher sole-parenting order.

**PART 8. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS.**

**§48-13-801. Tax exemption for child due support.**

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the payee parent except in cases of extended shared parenting. In extended shared parenting cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the payor parent only if the total of the payee parent’s income and child support is greater when the exemption is awarded to the payor parent.

**§48-13-802. Investment of child support.**

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
(a) The court has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The court may order such investment when all of the child's day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents.

(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

(c) A trustee named by the court shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. A trustee shall be governed by the provisions of the uniform prudent investor act as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers of the trustee and provide for the management and control of the trust. Upon petition of a party or the child's guardian or next friend and upon a showing of good cause, the court may order the release of funds in the trust from time to time.

§48-13-803. Reimbursement or arrearage only support.

When the payor is not paying any current support obligation but is required to pay for arrearages or reimbursement support, the court shall set a payment amount for the repayment of reimbursement support or of a support arrearage that is reasonable pursuant to the provisions of this article or section 6-301, but not to exceed the limits set out in section 14-408.
ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART 7. BONDS OR SECURITY TO SECURE PAYMENT OF OVERDUE SUPPORT.

*§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.

(a) An obligor with a pattern of overdue support may be required by order of the court to post bond, give security or some other guarantee to secure payment of overdue support. The guarantee may include an order requiring that stocks, bonds or other assets of the obligor be held in escrow by the court until the obligor pays the support.

(b) No less than fifteen days before such an order may be entered the bureau for child support enforcement attorney shall cause the mailing of a notice by first class mail to the obligor informing the obligor of the impending action, his or her right to contest it, and setting forth a date, time and place for a meeting with the bureau for child support enforcement attorney and the date, time and place of a hearing before the family court if the impending action is contested.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

*§48-18-105. General duties and powers of the bureau for child support enforcement.

In carrying out the policies and procedures for enforcing the provisions of this chapter, the bureau shall have the following power and authority:

(1) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;

*Clerk's Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
(2) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

(3) To undertake directly, or by contract, activities to collect and disburse support payments;

(4) To contract for professional services with any person, firm, partnership, professional corporation, association or other legal entity to provide representation for the bureau and the state in administrative or judicial proceedings brought to obtain and enforce support orders and establish paternity;

(5) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as promulgated by the supreme court of appeals;

(6) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(7) To ensure the compliance of contractors and their employees with the provisions of this chapter and legislative rules promulgated pursuant to this chapter, and to terminate, after notice and hearing, the contractual relationship between the bureau and a contractor who fails to comply;

(8) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(9) To locate parents who owe a duty to pay child support;
To cooperate with other agencies of this state and other
states to search their records to help locate parents;

To cooperate with other states in establishing and
enforcing support obligations;

To exercise such other powers as may be necessary to
effectuate the provisions of this chapter.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-103. Duties of the bureau for support enforcement attorneys.

Subject to the control and supervision of the commissioner:

(a) The bureau for child support enforcement attorney shall
supervise and direct the secretarial, clerical and other employ-
ees in his or her office in the performance of their duties as such
performance affects the delivery of legal services. The bureau
for child support enforcement attorney 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 bureau for child support
enforcement attorney shall not permit a nonlawyer who is
employed by the department of health and human resources in
a supervisory position over the bureau for child support
enforcement attorney to direct or regulate the attorney’s
professional judgment in rendering legal services to recipients
of services in accordance with the provisions of this chapter;

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.
nor shall any nonlawyer employee of the department attempt to
direct or regulate the attorney's professional judgment.

(c) The bureau for child support enforcement attorney shall
make available to the public an informational pamphlet,
designed in consultation with the commissioner. The informa-
tional pamphlet shall explain the procedures of the court and the
bureau for child support enforcement attorney; the duties of the
bureau for child support enforcement attorney; 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 bureau for child
support enforcement attorney.

(d) The bureau for child support enforcement shall act to
establish the paternity of every child born out of wedlock for
whom paternity has not been established, when the child's
caretaker is an applicant for or recipient of temporary assistance
for needy families, and when the 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 bureau for child support enforcement attorney 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 bureau for child support enforcement
attorney shall decline to so act. The bureau for child support
enforcement attorney, upon the request of the mother, alleged
father or the caretaker of a child born out of wedlock, regardless
of whether the mother, alleged father or the caretaker is an
applicant or recipient of temporary assistance for needy
families, shall undertake to establish the paternity of such child.
(e) The bureau for child support enforcement attorney 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 bureau for child support enforcement attorney 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 bureau for child support enforcement attorney shall decline to so act. The bureau for child support enforcement attorney, 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 bureau for child support enforcement attorney shall utilize the provisions of article 16-101, et seq., 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 bureau for child support enforcement attorney may utilize the federal courts to obtain and enforce court orders for support.

(f) The bureau for child support enforcement attorney 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 bureau for child support enforcement attorney may decline to commence an action to obtain an order of support under the provisions of article 14-101, et seq., 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 bureau for child support enforcement attorney that an action should properly be brought to obtain an order for support.

(h) If the bureau for child support enforcement office, through the bureau for child support enforcement attorney, shall undertake paternity determination services, child support collection or support collection services 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 commissioner: Provided, That the commissioner 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 24. ESTABLISHMENT OF PATERNITY.


(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

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
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 court upon the petition of the state or another proper party may intervene to determine and protect the respective personal rights of:

(A) A child for whom paternity has not been lawfully established;

(B) The mother of the child; and

(C) 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) An order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, that 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 respondent, rather than her husband, is the father of the child;

(3) The state of West Virginia, including the bureau for child support enforcement;

(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 or her 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) If a paternity proceeding is brought that names the father of the child as being someone other than the person whose name appears on the child's birth certificate, then the person bringing the action shall cause a copy of the verified complaint to be served on the person named as the father on the birth certificate. Service must be in accordance with rule 4 of the rules of civil procedure.

(g) 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.

(h) 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.

(i) 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.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-204. Family or household members defined.
§48-27-205. Final hearing defined.
§48-27-206. Law-enforcement agency defined.
§48-27-208. Program of intervention for perpetrators defined.
§48-27-209. Protective order defined.
§48-27-301. Jurisdiction.
§48-27-401. Proceedings when divorce action is pending.
§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.
§48-27-403. Emergency protective orders of court; hearing; persons present.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order extension.
§48-27-901. Civil contempt; violation of protective orders; to show cause.
§48-27-1101. Forms to be provided; operative date.


"Domestic 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 section 27-204:

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.

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.

"Emergency hearing" means the hearing before a magistrate upon the filing of a petition for a protective order. An emergency hearing may be held ex parte.

*§48-27-204. Family or household members defined.

"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. Have a child in common, regardless of whether they have ever married or lived together; and
7. Have the following relationships to another person:

   (A) Parent;
   (B) Step parent;
   (C) Brother or sister;
   (D) Half-brother or half-sister;
   (E) Stepbrother or stepsister;

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
17 (F) Step father-in-law or step mother-in-law;
18 (G) Child or step child;
19 (H) Daughter-in-law or son-in-law;
20 (I) Step daughter-in-law or step son-in-law;
21 (J) Grandparent;
22 (K) Step grandparent;
23 (L) Aunt, aunt-in-law or step-aunt;
24 (M) Uncle, uncle-in-law or step-uncle;
25 (N) Niece or nephew;
26 (O) First or second cousin; or
27 (8) Persons who have the relationships set forth in subparagrahs (A) through (O), subdivision (7) of this section to a
28 family or household member, as defined in subdivisions (1)
29 through (6) of this section.

*§48-27-205. Final hearing defined.

"Final hearing" means the hearing before a family court
judge as may be requested by the respondent following the
entry of an order by a magistrate as a result of the emergency
hearing.

*§48-27-206. Law-enforcement agency defined.

(a) "Law-enforcement agency" means and is limited to:

(1) The state police and its members;

*Clerk's Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
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(2) A county sheriff and his or her law-enforcement deputies; and

(3) A police department in any municipality as defined in section two, article one, chapter eight of this code.

(b) The term “law-enforcement agency” includes the department of health and human resources in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.


“Program for victims of domestic violence” means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.

§48-27-208. Program of intervention for perpetrators defined.

“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 violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic violence.

§48-27-209. Protective order defined.

“Protective order” means an emergency protective order issued by a magistrate as a result of the emergency hearing or a final protective order issued by a family court judge when the
respondent has requested a hearing before the family court judge following the entry of the emergency protective order by the magistrate.

PART 3. PROCEDURE.


Circuit courts, family courts and magistrate courts, have concurrent jurisdiction over domestic violence proceedings as provided in this article.


Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

*§48-27-401. Proceedings when divorce action is pending.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to part 5-501, et seq.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order has been entered in the action for divorce, annulment and separate maintenance, pursuant to part 5-501, et seq.

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
(c) Except as provided in section 5-509 of this chapter and section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to part 5-501, et seq. of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section 27-505, any order issued pursuant to this section where a subsequent action is filed seeking a divorce, annulment or separate maintenance, shall remain in full force and effect by operation of this statute until a temporary or final order is entered pursuant to part 5-501, et seq. of this chapter, or a final order is entered granting or dismissing the action for divorce, annulment or separate maintenance.

*§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.*

(a) The provisions of this section apply where a temporary order has been entered by a family court in an action for divorce, annulment or separate maintenance, notwithstanding the provisions of subsection 27-401(c) of this article.

(b) A person who is a party to an action for divorce, annulment or separate maintenance in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children, or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent’s abuse of a child, as abuse is defined in section 27-202 of this article. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.

(e) (1) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family court in which the action is pending and to law-enforcement agencies. Upon receipt of the petition and order, the family court shall examine its provisions. Within ten days of the magistrate’s issuance of the temporary emergency protective order, the family court shall issue an order either to extend such emergency protection for a time certain or to vacate the magistrate’s order. The family court shall forthwith give notice to all parties and to the issuing magistrate court. The magistrate court clerk shall forward a copy of the family court order to law-enforcement agencies.
(2) If no temporary order has been entered in the pending action for divorce, annulment or separate maintenance the family court shall forthwith return the order with such explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order, noting thereon the reason for termination. The magistrate court clerk shall transmit a copy of the vacated order to the parties and law-enforcement agencies.

(f) Notwithstanding any other provision of this code, if the family court extends the temporary emergency protective order entered by the magistrate or if, pursuant to the provisions of section 5-509 the family court enters a protective order as temporary relief in an action for divorce, the family court order shall be treated and enforced as a protective order issued under the provisions of this article.

*§48-27-403. Emergency protective orders of court; hearings; persons present.*

(a) Upon the filing of a verified petition under this article, the court may enter an emergency protective order as it may deem necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an emergency protective order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner's legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. If

*Clerk’s Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
the court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order issued pursuant to the proceedings, and a statement of the right of the respondent to request a final hearing before the family court, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section and a statement of the right of the petitioner to request a final hearing as provided in subsection (d) of this section shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff’s office and local office of the state police, within twenty-four hours of the entry of the order. An emergency protective order is effective for ninety days or one hundred eighty days, in the discretion of the court, unless modified by order of the family court upon hearing as provided in this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order and service on the respondent and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to the office of the clerk of the circuit court for use by the family court, if necessary, under the provisions of this section.

(d) After the respondent has been served with the emergency protective order, the respondent may request a final hearing on the domestic violence petition before the family court. After the order has been delivered to the petitioner, the petitioner may request a final hearing on the domestic violence petition before the family court. The request for hearing may be made in person, telephonically or by written request to the
offices of the family court. If the respondent’s request for hearing is made within five days from the date the order was served on the respondent or if the petitioner’s request for hearing is made within five days from the date the order was delivered to the petitioner, the hearing must be scheduled by the family court within ten days. If the request is made more than five days after the respondent was served with the order or more than five days after the order was delivered to the petitioner, the hearing must be scheduled on an expedited basis. The statement advising the parties of the right to a final hearing must include, clearly and concisely, all of the information contained in this subsection and the name, mailing address, physical location and telephone number of the family court having jurisdiction over the proceedings.

(e) If requested by the respondent or by the petitioner, as provided in subsection (d) of this section, the family court must hold, a final hearing at which the petitioner must prove the allegation of domestic violence, or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, or such petition shall be dismissed by the family court. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(f) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.
(g) Upon hearing, the family court may dismiss the petition or enter a final protective order for a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days. If a hearing is continued, the family court may make or extend such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

*§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided by subsection 27-401(d) of this article, an emergency protective order issued by a magistrate, family court or circuit judge pursuant to this article, 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 family or circuit court shall extend its order for an additional ninety-day period.

(b) 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.

(c) Certified copies of any order entered 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

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
the order. The protective order shall be in full force and effect in every county of this state.

(d) The family court may modify the terms of an emergency or final protective order upon motion of either party.

**§48-27-510. Appeals.**

(a) A petitioner who has been denied an emergency protective order may file a petition for appeal of the denial, within five days of the denial, to the family court.

(b) Any party to a final protective order may file a petition for appeal, within ten days of the entry of the order in family court, to the circuit court. The order shall remain in effect pending an appeal unless stayed by the circuit court. No bond shall be required for any appeal under this section.

(c) A petition for appeal filed pursuant to this section shall be heard by the court within ten days from the filing of the petition.

(d) The standard of review of findings of fact made by the family court is clearly erroneous and the standard of review of application of the law to the facts is an abuse of discretion standard.

**PART 9. SANCTIONS.**

**§48-27-901. Civil contempt; violation of protective orders; order to show cause.**

(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. The petition shall be filed in the family court, if a family court entered an order or in the circuit court, if a circuit court

*Clerk's Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
entered the order, in the county in which the violation occurred
or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a
hearing on the petition shall be held within five days from the
filing of the petition. Any order to show cause which is issued
shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the
violator to comply with specific provisions of the protective
order and post a bond as surety for faithful compliance with
such order.


(a) When a respondent abuses the petitioner or minor
children, or both, or is physically present at any location in
knowing and willful violation of the terms of an emergency or
final protective order under the provisions of this article or
section 5-509 of this chapter granting the relief pursuant to the
provisions of this article, any person authorized to file a petition
pursuant to the provisions of section 27-305 or the legal
guardian or guardian ad litem may file a petition for civil
contempt as set forth in section 27-901.

(b) When any such violation of a valid order has occurred,
the petitioner may file a criminal complaint. If the court finds
probable cause upon the complaint, the court shall issue a
warrant for arrest of the person charged.

*§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.

(a) A respondent who abuses the petitioner or minor
children or who is physically present at any location in knowing
and willful violation of the terms of an emergency or final

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which
passed prior to this act.
4 protective order issued under the provisions of this article or
5 section 5-509 of this chapter granting the relief pursuant to the
6 provisions of this article, is guilty of a misdemeanor and, upon
7 conviction thereof, shall be confined in the county or regional
8 jail for a period of not less than one day nor more than one year,
9 which jail term shall include actual confinement of not less than
10 twenty-four hours, and shall be fined not less than two hundred
11 fifty dollars nor more than two thousand dollars.

(b) When a respondent previously convicted of the offense
12 described in subsection (a) of this section abuses the petitioner
13 or minor children or is physically present at any location in
14 knowing and willful violation of the terms of a temporary or
15 final protective order issued under the provisions of this article,
16 the respondent is guilty of a misdemeanor and, upon conviction
17 thereof, shall be confined in the county or regional jail for not
18 less than three months nor more than one year, which jail term
19 shall include actual confinement of not less than twenty-four
20 hours, and fined not less than five hundred dollars nor more
21 than three thousand dollars, or both.

PART 10. ARRESTS.


(a) When a law-enforcement officer observes any respon-
1 dent abuse the petitioner or minor children or the respondent's
2 physical presence at any location in knowing and willful
3 violation of the terms of an emergency or final protective order
4 issued under the provisions of this article or section 5-509 of
5 this chapter granting the relief pursuant to the provisions of this
6 article, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have
7 committed a violation of the provisions of section 27-903, a

*Clerk's Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
law-enforcement officer may arrest the perpetrator for said offense where:

(1) The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a circuit court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

PART 11. MISCELLANEOUS PROVISIONS.

*§48-27-1101. Forms to be provided; operative date.*

(a) The West Virginia supreme court of appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article, and the court shall distribute such forms to the clerk of the circuit court, the secretary-

*Clerk’s Note:* This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
clerk of the family court and the clerk of magistrate court of each county within the state.

(b) The amendment enacted to this article by the passage of Engrossed Committee Substitute for Senate Bill No. 652 during the regular session of the Legislature in the year two thousand one is effective the first day of September, two thousand one.


All circuit court judges may and magistrates and family courts shall receive a minimum of three hours training each year on domestic violence which shall include training on the psychology of domestic violence, the battered wife and child syndromes, sexual abuse, courtroom treatment of victims, offenders and witnesses, available sanctions and treatment standards for offenders, and available shelter and support services for victims. The supreme court of appeals may provide such training in conjunction with other judicial education programs offered by the supreme court.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

(a) A juror shall be paid mileage, at the rate set by the commissioner of finance and administration for state employees, for travel expenses from the juror’s residence to the place of holding court and return and shall be reimbursed for other expenses incurred as a result of required attendance at sessions of the court at a rate of between fifteen and forty dollars, set at the discretion of the circuit court or the chief judge thereof, for each day of required attendance. Such reimbursement shall be based on vouchers submitted to the sheriff. Such mileage and reimbursement shall be paid out of the state treasury.

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
(b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide for and furnish the jury necessary meals and lodging while they are in the sheriff's custody at a reasonable cost to be determined by an order of the court; and the meals and lodging shall be paid for out of the state treasury.

(c) Anytime a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In circuit court cases the jury cost shall be the actual cost of the jurors' service, and in magistrate court cases, the jury cost assessed shall be two hundred dollars. Such costs shall be assessed against the parties as follows:

(1) In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;

(2) In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or trial is to the bench; and

(3) In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons therefor in a written order: Provided, That a waiver of the assessment of a jury fee in a case tried before a jury in magistrate court may only be permitted after the circuit court, or the chief judge thereof, has reviewed the reasons set forth in the order by the magistrate and has approved such waiver.

(d)(1) The circuit or magistrate court clerk shall by the tenth day of the month following the month of collection remit to the state treasurer for deposit as described in subdivision (2) of this subsection all jury costs collected, and the clerk and the clerk's surety are liable therefor on the clerk's official bond as
for other money coming into the clerk's hands by virtue of the clerk's office.

(2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the state treasurer be deposited as follows: (A) One-half shall be deposited into the parent education and mediation fund created in section six hundred four, article nine, chapter forty-eight of this code; and (B) one-half shall be deposited into the domestic violence legal services fund created in section six hundred three, article twenty-six, chapter forty-eight of this code.

(e) The sheriff shall pay into the state treasury all jury costs received from the court clerks, and the sheriff shall be held to account in the sheriff's annual settlement for all such moneys.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered as such clerk the following fees, and such fees shall be paid in advance by the parties for whom such services are to be rendered:

1 (1) For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, eighty-five dollars: Provided, That
the fee for instituting an action for divorce shall be one hundred five dollars;

(2) Beginning on and after the first day of July, one thousand nine hundred ninety-nine, for instituting an action for divorce, separate maintenance or annulment, one hundred thirty-five dollars;

(3) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, eighty-five dollars; and

(4) For petitioning for an expedited modification of a child support order, thirty-five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;

(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate’s court, three dollars;
(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents; and

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, fifty-five dollars; and

(2) In the case of any felony, sixty-five dollars.

(d) No such clerk shall be required to handle or accept for disbursement any fees, cost or amounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

*§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce,

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), and H. B. 3131 (Chapter 65), which passed prior to this act.*
filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in subsection (c) of this section, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of sixty dollars; and

(2) Into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

(b) For each divorce action instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the supreme court of appeals, the number of actions filed by persons unable to pay, and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;
(3) Into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code, an amount of fifty dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

c) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the regional jail and correctional facility authority fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code, an amount of seventy dollars; and

(4) Into the court security fund in the state treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

d) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the family court fund established
under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4), subsection (a), section eleven of this article.

(e) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(f) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and correctional facility authority fund in the state treasury an amount equal to forty dollars of every fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.

CHAPTER 94

(Com. Sub. for S. B. 59 — By Senator Bailey)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section four hundred two, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons authorized to celebrate marriages; requiring the secretary of state to authorize certain persons to celebrate marriages; establishing a statewide registry for persons authorized to celebrate marriages; permitting a registration fee; requiring county clerks to transmit names of persons authorized to celebrate marriages to secretary of state; and creating registration fee fund.

Be it enacted by the Legislature of West Virginia:

That section four hundred two, 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. MARRIAGES.

§48-2-402. Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.

(a) Beginning the first day of September, two thousand one, the secretary of state shall, upon payment of the registration fee established by the secretary of state pursuant to subsection (d) of this section, make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the state, upon proof that the person:

1. Is eighteen years of age or older;

2. Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
(3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

(b) The person shall give bond in the penalty of one thousand five hundred dollars, with surety approved by the commission. Any religious representative who gives proof before the county commission of his or her ordination or authorization by his or her respective church, synagogue, spiritual assembly or religious organization is exempt from giving the bond.

(c) The secretary of state shall establish a central registry of persons authorized to celebrate marriages in this state. Every person authorized under the provisions of subsection (a) of this section to celebrate marriages shall be listed in this registry. Every county clerk shall, prior to the first day of October, two thousand one, transmit to the secretary of state the name of every person authorized to celebrate marriages by order issued in his or her county since one thousand nine hundred sixty and the secretary of state shall include these names in the registry. The completed registry and periodic updates shall be transmitted to every county clerk.

(d) A fee not to exceed twenty-five dollars may be charged by the secretary of state for each registration received on or after the first day of September, two thousand one, and all money received shall be deposited in a special revenue revolving fund designated the “Marriage Celebrants Registration Fee Administration Fund” in the state treasury to be administered by the secretary of state. Expenses incurred by the secretary in the implementation and operation of the registry program shall be paid from the fund.
(e) No marriage performed by a person authorized by law to celebrate marriages may be invalidated solely because the person was not listed in the registry provided for in this section.

(f) The secretary of state shall promulgate rules to implement the provisions of this section.

CHAPTER 95

(S. B. 437 — By Senators Wooton, Burnette, Fanning, Hunter, Kessler, Minard, Oliverio, Redd, Ross, Rowe, Deem, Facemyer and McKenzie)

[Passed March 16, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eleven, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article two-a, chapter fifty-one of said code, all relating to extending the date circuit courts and family law masters will assume jurisdiction of full hearings in domestic violence proceedings.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
51. Courts and Their Officers.
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY VIOLENCE.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

Remembered, That on and after the first day of September, two thousand one, magistrate court jurisdiction shall be limited, and thereafter final hearings wherein a protective order is sought shall be heard before a circuit judge or a family law master.

(b) Venue. — The action may be heard in the county in which the domestic or family violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.

(c) Petitioner's rights. — The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.

(d) Priority of petitions. — Any petition filed under the provisions of this article shall be given priority over any other civil action before the court, except actions in which trial is in progress, and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a

*Clerk's Note: This section was recodified in Chapter 48, article 27 in House Bill 2199 (Ch. 91), Acts 2001.
petition for relief under this article shall be heard within ten
working days of the filing of the appeal.

(e) Full faith and credit. — Any protective order issued
pursuant to this article shall be effective throughout the state in
every county. Any protective order issued by any other state,
territory or possession of the United States, Puerto Rico, the
District of Columbia or Indian tribe shall be accorded full faith
and credit and enforced as if it were an order of this state
whether or not such relief is available in this state. A protective
order from another jurisdiction is presumed to be valid if the
order appears authentic on its face and shall be enforced in this
state. If the validity of the order is contested, the court or law
enforcement to which the order is presented shall, prior to the
final hearing, determine the existence, validity and terms of
such order in the issuing jurisdiction. A protective order from
another jurisdiction may be enforced even if the order is not
entered into the state law-enforcement information system
described by section twelve of this article.

(f) Service by publication. — A protective order may be
served on the respondent by means of a Class I legal advertise-
ment published notice, with the publication area being the
county in which the respondent resides, published in accordance
with the provisions of section two, article three, chapter fifty-
nine of this code if: (i) The petitioner files an affidavit with the
court stating that an attempt at personal service pursuant to rule
four of the West Virginia rules of civil procedure has been
unsuccessful or evidence is adduced at the hearing for the
protective order that the respondent has left the state of West
Virginia; and (ii) a copy of the order is mailed by certified or
registered mail to the respondent at the respondent's last known
residence and returned undelivered.


(a) Prior to the first day of September, two thousand one,
any party to a temporary or final protective order entered by a
magistrate may, as a matter of right, present a petition for
appeal, within five days of entry of the order in magistrate

*Clerk's Note: This section was recodified in Chapter 48, article 27 in House Bill 2199 (Ch. 91), Acts 2001.
court, to the circuit court. The order shall remain in effect pending an appeal unless stayed by the circuit court.

(b) On and after the first day of September, two thousand one, any party to a temporary order entered by a magistrate or a final protective order entered by a family law master may, as a matter of right, present a petition for appeal, within five days of entry of the order by the magistrate or family law master, to the circuit court. The order shall remain in effect pending an appeal unless stayed by the circuit court.

(c) No bond shall be required for any appeal under this section.

(d) In any case where a petition for appeal is filed under this section, the petition shall be heard de novo by the circuit court within ten days from the filing of the petition for appeal.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

*§51-2A-10. Matters to be heard by a family law master.

(a) A chief judge of a circuit court shall refer to the family law master the following matters for hearing:

(1) Actions to obtain orders of support brought under the provisions of section one, article five, chapter forty-eight-a of this code;

(2) All actions to establish paternity brought under the provisions of article six, chapter forty-eight-a of this code and any dependent claims related to such action regarding child support, custody and visitation;

(3) All petitions for writs of habeas corpus wherein the issue contested is child custody;

(4) All motions for temporary relief affecting child custody, visitation, child support, spousal support or domestic or family violence, wherein either party has requested such referral or the

*Clerk’s Note: This section was also amended by H. B. 2199 (Chapter 91), which passed subsequent to this act.
court on its own motion in individual cases or by general order 
has referred such motions to the family law master: Provided,
That if the family law master determines, in his or her discre-
tion, that the pleadings raise substantial issues concerning the
identification of separate property or the division of marital
property which may have a bearing on an award of support, the
family law master shall notify the appropriate circuit court of
this fact and the circuit court may refer the case to a special
commissioner chosen by the circuit court to serve in such
capacity;

(5) All petitions for modification of an order involving
child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate mainte-
nance brought pursuant to article two, chapter forty-eight of this
code: Provided, That an action for divorce, annulment or
separate maintenance which does not involve child custody or
child support shall be heard by a circuit judge if, at the time of
the filing of the action, the parties file a written property
settlement agreement which has been signed by both parties;

(7) All actions wherein an obligor is contesting the enforce-
ment of an order of support through the withholding from
income of amounts payable as support or is contesting an
affidavit of accrued support, filed with a circuit clerk, which
seeks to collect arrearage;

(8) All actions commenced under chapter forty-eight-b of
this code or the interstate family support act of another state;

(9) Proceedings for the enforcement of support, custody or
visitation orders;

(10) All actions to establish custody of a minor child or
visitation with a minor child, including actions brought pursu-
ant to the uniform child custody jurisdiction act and actions
brought to establish grandparent visitation: Provided, That any
action instituted under article six, chapter forty-nine of this
code shall be heard by a circuit judge;
(11) On and after the first day of October, one thousand nine hundred ninety-nine, civil contempts and direct contempts: Provided, That criminal contempts must be heard by a circuit judge; and

(12) On and after the first day of September, two thousand one, final hearings in domestic or family violence proceedings wherein a protective order is sought.

(b) On its own motion or upon motion of a party, the circuit court may revoke the referral of a particular matter to a family law master if the family law master is recused, if the matter is uncontested, or for other good cause, or if the matter will be more expeditiously and inexpensively heard by a circuit judge without substantially affecting the rights of parties.

CHAPTER 96

(H. B. 3128 — By Mr. Speaker, Mr. Kiss, and Delegates Wills, Staton, Webster, Amores and Mezzatesta)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred seven, relating to exempting domestic violence shelters from zoning restrictions, under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. DOMESTIC VIOLENCE ACT.
§48-26-407. Domestic violence shelters not in violation of zoning rules and resolutions as to use.

1 Domestic violence shelters established pursuant to section four hundred two of this article, called the domestic violence act, shall not be subject to the enforcement of municipal zoning ordinances on the basis of being in noncompliance or variance with a particular use district: Provided, That as to all other provisions of those ordinances, the ordinances will control.

CHAPTER 97

(Com. Sub. for S. B. 127 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-c, relating to prescription drug cost management; providing legislative findings and purpose; defining terms; providing for review and approval of certain contracts by the public employees insurance agency finance board; authorizing the director of the public employees insurance agency to execute certain prescription drug purchasing agreements, to amend existing contracts and to execute pharmacy benefit manager contracts; exempting the agreements and contracts from certain purchasing requirements; requiring an audit and reports; authorizing the public employees insurance agency director to explore innovative strategies for managing prescription drug costs; requiring semi-annual report to the joint committee on government and finance; and providing for termination of authorizations.

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

ARTICLE 16C. PRESCRIPTION DRUG COST MANAGEMENT ACT.

§5-16C-1. Legislative findings; purpose; short title.
§5-16C-2. Definitions.
§5-16C-3. Finance board responsibilities for review and approval of certain contracts.
§5-16C-4. Authorization to execute prescription drug purchasing agreements.
§5-16C-5. Authorization to amend existing contracts.
§5-16C-6. Authorization to execute pharmacy benefit management contract.
§5-16C-7. Exemption from purchasing division requirements.
§5-16C-8. Audit required; reports.
§5-16C-9. Innovative strategies.
§5-16C-10. Termination.

§5-16C-1. Legislative findings; purpose; short title.

1 The Legislature finds that the rapidly rising cost of prescription drugs places an undue financial burden on the state of West Virginia, the payors and the consumers of prescription drugs. The purpose of this legislation is to authorize the director of the public employees insurance agency to act on behalf of specified agencies, programs and political subdivisions to manage the steady increase in prescription drug costs, thus benefitting the citizens and fiscal strength of this state. This article shall be known and may be cited as the "Prescription Drug Cost Management Act".

§5-16C-2. Definitions.

1 As used in this article:

2 (1) "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an auditor to attest to the fairness of management's assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations, conducted by an independent certified public accountant in accordance with the applicable statement on standards: Provided, That the report
shall include an incurred-but-not-reported calculation, where available.

(2) "Director" means the director of the public employees insurance agency created under article sixteen of this chapter.

(3) "Finance board" means the public employees insurance agency finance board created in section four, article sixteen of this chapter.

(4) "Pharmacy benefit manager" means an entity that procures prescription drugs at a negotiated rate under a contract and which may serve as a third party prescription drug benefit administrator.

(5) "Prescription drug purchasing agreement" means a written agreement to pool all parties' prescription drug buying power in order to negotiate the best possible prices and which delegates authority to negotiate on behalf of the parties to the director.

(6) "Prescription drugs" mean substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or National Formulary", or any supplement thereto, dispensed pursuant to a prescription issued by an authorized health care practitioner, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human, as well as prescription drug delivery systems, testing kits and related supplies.

§5-16C-3. Finance board responsibilities for review and approval of certain contracts.

The finance board is responsible for reviewing any proposed contract authorized by this article before it is executed by the director of the public employees insurance agency. If the board determines that the proposed contract meets the require-
ments of this article and would assist in effectively managing the costs for the programs involved and would not result in jeopardizing state funds or funds due the state, it shall approve the contract and authorize the director of the public employees insurance agency to execute the contract.

§5-16C-4. Authorization to execute prescription drug purchasing agreements.

(a) The director may execute, subject to the provisions of subsections (b), (c) and (d) of this section and as permitted by applicable federal law, prescription drug purchasing agreements with:

(1) All departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions of this state, including, but not limited to, the children's health insurance program, the division of corrections, the division of juvenile services, the regional jail and correctional facility authority, the workers' compensation fund, state colleges and universities, public hospitals, state or local institutions such as nursing homes, veterans' homes, the division of rehabilitation, public health departments and the bureau of medical services: Provided, That any contract or agreement executed with or on behalf of the bureau of medical services shall contain all necessary provisions to comply with the provisions of Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq., dealing with pharmacy services offered to recipients under the medical assistance plan of West Virginia;

(2) Governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasipublic corporations and political subdivisions;

(3) Regional or multistate purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing
power of the individual members in order to increase bargain-
ing power; and

(4) Arrangements with entities in the private sector, including self-funded benefit plans, toward combined purchas-
ing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products: Provided, That no private entity may be compelled to participate in the prescription drug purchasing pool: Provided, however, That the director may not execute a contract with a private entity without further enactment of the Legislature specifically authorizing the agreement.

(b) The finance board shall approve each agreement before it is executed by the director and the director may not execute any agreement not approved by the finance board.

(c) The finance board may not approve and the director may not execute any agreement that does not effectively and efficiently manage rising drug costs on behalf of the parties to the agreement.

(d) The finance board may not approve and the director may not execute any agreement that grants the state's credit for the purchase of prescription drugs by any entity other than this state.

§5-16C-5. Authorization to amend existing contracts.

The director may renegotiate and amend existing prescrip-
tion drug contracts to which the public employees insurance agency is a party for the purpose of managing rising drug costs.

§5-16C-6. Authorization to execute pharmacy benefit manage-
ment contract.
The director may negotiate and execute pharmacy benefit management contracts for the purpose of managing rising drug costs for this state and all parties which have executed prescription drug purchasing agreements with the director.

§5-16C-7. Exemption from purchasing division requirements.

The provisions of article three, chapter five-a of this code do not apply to the agreements and contracts executed under the provisions of this article, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the attorney general.

§5-16C-8. Audit required; reports.

(a) The director shall cause to be conducted an audit of any funds expended pursuant to any prescription drug purchasing agreement or pharmacy benefit management contract executed under the provisions of this article for each fiscal year that the prescription drug purchasing agreement or pharmacy benefit management contract is in effect. The director shall submit the audit to the joint committee on government and finance upon completion, but in no event later than the thirty-first day of December after the end of the fiscal year subject to audit.

(b) The director shall provide written notice to the joint committee on government and finance before executing a prescription drug purchasing agreement or a pharmacy benefit management contract or amending an existing prescription drug contract.

§5-16C-9. Innovative strategies.

(a) The director may explore innovative strategies by which West Virginia may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state’s citizens, including:
(1) Enacting fair prescription drug pricing policies;

(2) Providing for discount prices or rebate programs for seniors and persons without prescription drug insurance;

(3) Coordinating programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices;

(4) Requiring prescription drug manufacturers to disclose to the state expenditures for advertising, marketing and promotion, as well as for provider incentives and research and development efforts;

(5) Establishing counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate;

(6) Establishing disease state management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state’s population with prescription drugs;

(7) Studying the feasibility and appropriateness of executing prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts;

(8) Studying the feasibility and appropriateness of authorizing the establishment of voluntary private buying clubs, cooperatives or purchasing alliances comprised of small
businesses and or individuals for the purpose of purchasing prescription drugs at optimal prices; and

(9) Other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all West Virginia citizens.

(b) The director shall report to the joint committee on government and finance on a semi-annual basis regarding activities and recommendations relating to the mandates of this section.

§5-16C-10. Termination.

The authorizations provided for in this article terminate pursuant to the provisions of article ten, chapter four of this code on the first day of July, two thousand five, unless continued pursuant to the provisions of that article by legislation enacted prior to the termination.

CHAPTER 98

(S. B. 529 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
one, as amended, relating to expanding the membership of the council for community and economic development.

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

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

**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

(a) The council for community and economic development, within the West Virginia development office, is a body corporate and politic, constituting a public corporation and government instrumentality. Membership on the council consists of:

1. No less than nine nor more than eleven members to be appointed by the governor, with the advice and consent of the Senate, representing community or regional interests, including economic development, commerce, banking, manufacturing, the utility industry, the mining industry, the telecommunications/data processing industry, small business, labor, tourism or agriculture: *Provided,* That one member appointed pursuant to this subsection shall be a member of a regional planning and development council. Of the members representing community or regional interests, there shall be at least three members from each congressional district of the state and they shall be appointed in such a manner as to provide a broad geographical distribution of members of the council;

2. Two at-large members to be appointed by the governor with the advice and consent of the Senate;
(3) One member to be appointed by the governor from a list of two persons recommended by the speaker of the House of Delegates;

(4) One member to be appointed by the governor from a list of two persons recommended by the president of the Senate;

(5) The president of the West Virginia economic development council; and

(6) The chair, or his or her designee, of the tourism commission created pursuant to the provisions of section eight of this article.

In addition, the president of the Senate and the speaker of the House of Delegates, or his or her designee, shall serve as ex officio nonvoting members.

(b) The governor shall appoint the appointed members of the council to four-year terms. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment. In cases of any vacancy in the office of a member, the vacancy shall be filled by the governor in the same manner as the original appointment.

(c) Members of the council are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of the voting members constitute a quorum for the purpose of conducting business. The council shall elect its chair for a term to run concurrent with the term of office of the member elected as chair. The chair is eligible for successive terms in that position.
(d) The council shall employ an executive director of the West Virginia development office who is qualified for the position by reason of his or her extensive education and experience in the field of professional economic development. The executive director shall serve at the will and pleasure of the council. The salary of the director shall be fixed by the council. The director shall have overall management responsibility and administrative control and supervision within the West Virginia development office. It is the intention of the Legislature that the director provide professional and technical expertise in the field of professional economic and tourism development in order to support the policy-making functions of the council, but that the director not be a public officer, agent, servant or contractor within the meaning of section thirty-eight, article VI of the constitution of West Virginia and not be a statutory officer within the meaning of section one, article two, chapter five-f of this code. Subject to the provisions of the contract provided for in section four of this article, the director may hire and fire economic development representatives employed pursuant to the provisions of section five of this article.

CHAPTER 99

(S. B. 716 — By Senators Unger, Craigo, Bowman, Fanning, Sprouse, McCabe, Jackson, Kessler, Helmick and Plymale)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
establishing the joint commission; indicating economic development vision and goals for the state; establishing the joint commission on economic development; specifying the duties of the commission; requiring the commission examine the vision and goals every four years; requiring certain agencies to provide copies of rules to the commission; requiring the development office to collect information and present it to the joint commission; requiring the legislative auditor to provide information to the joint commission; and directing the commission to undertake various studies.

_Ed it enacted by the Legislature of West Virginia:_

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

**Article**

2. West Virginia Development Office.


**ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.**

§5B-2-3. Powers and duties of council for community and economic development.

1. (a) The council for community and economic development shall enhance economic growth and development through the development of a comprehensive economic development strategy for West Virginia. “Comprehensive economic development strategy” means a plan that outlines strategies and activities designed to continue, diversify or expand the economic base of the state as a whole; create jobs; develop a highly skilled work force; facilitate business access to capital, including venture capital; advertise and market the resources offered by the state with respect to the needs of business and industry;
facilitate cooperation among local, regional and private
economic development enterprises; improve infrastructure on
a state, regional and community level; improve the business
climate generally; and leverage funding from sources other than
the state, including federal and private sources.

(b) The council shall develop a certified development
community program and provide funding assistance to the
participating economic development corporations or authorities
through a matching grant program. The council shall establish
criteria for awarding matching grants to the corporations or
authorities within the limits of funds appropriated by the
Legislature for the program. The matching grants to corpora-
tions or authorities eligible under the criteria shall be in the
amount of thirty thousand dollars for each fiscal year, if
sufficient funds are appropriated by the Legislature. The West
Virginia development office shall recognize existing county,
regional or multicounty corporations or authorities where
appropriate.

In developing its plan, the West Virginia development
office shall consider resources and technical support available
through other agencies, both public and private, including, but
not limited to, the state college and university systems; the
West Virginia housing development fund; the West Virginia
economic development authority; the West Virginia parkways,
economic development and tourism authority; the West
Virginia round table; the West Virginia chamber of commerce;
regional planning and development councils; regional partner-
ship for progress councils; and state appropriations.

(c) The council shall promulgate rules to carry out the
purposes and programs of the West Virginia development office
to include generally the programs available, and the procedure
and eligibility of applications relating to assistance under the
programs. These rules are not subject to the provisions of
chapter twenty-nine-a of this code, but shall be filed with the secretary of state. Any new rules promulgated by the council shall be promptly submitted to the joint commission created in article three of this chapter. The current rules shall be submitted to the joint commission within thirty days of the effective date of this section.

ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION SHARED.

§5B-3-1. Legislative intent.
§5B-3-2. Creation of the joint commission on economic development.
§5B-3-3. Reexamination of vision and goals.
§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.
§5B-3-5. Joint commission on economic development studies.

§5B-3-1. Legislative intent.

(a) *West Virginia: A shared vision statement.* — West Virginia’s strong commitment to future generations has created a vibrant and diverse economy balancing quality jobs and the state’s irreplaceable natural beauty. West Virginia has a highly skilled and educated workforce, is a leader in innovation and offers an excellent quality of life for all residents.

(b) “West Virginia: A vision shared” vision statement is meant to be used as a touchstone to ensure that actions being undertaken are in line and on course.

(c) It is the intent of the Legislature to set economic development goals for the state and that the joint commission on economic development, created in this article, use the goals in bringing all agencies performing economic development and workforce investment activities together to improve the economic situation in this state.
(d) Furthermore, it is the intent of the Legislature that the state work toward accomplishing three overall goals:

(1) The development of a comprehensive statewide economic development strategy;

(2) The effective statewide coordination of economic development programs; and

(3) The development of meaningful agency and program benchmarks and performance-based evaluations.

§5B-3-2. Creation of the joint commission on economic development.

(a) The joint commission on economic development is hereby established. The commission shall be composed of sixteen members as follows:

(1) The chairs of the Senate and House of Delegates finance committees;

(2) The chairs of the Senate and House of Delegates judiciary committees;

(3) The chairs of the Senate and House of Delegates education committees;

(4) Five additional members of the Senate appointed by the president of the Senate; and

(5) Five additional members of the House of Delegates appointed by the speaker of the House of Delegates.

No more than four of the five additional members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the president of the Senate and the
speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the co-chair-
persons of the commission.

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

(c) The commission may explore how West Virginia can:

1. Invest in systems that build workforce skills and promote lifelong learning to ensure a competitive workforce;

2. Enhance the infrastructure, communications and transportation needed to support the knowledge-based industries and electronic commerce;

3. Reorganize government to deliver services more efficiently, using technology, privatization and partnerships with the private sector;

4. Align state tax systems to meet the demands of the twenty-first century economy;

5. Develop more uniform regulatory and tax systems to reduce complexity, eliminate market distortions and better protect consumers;

6. Support entrepreneurs by streamlining business regulations, providing timely decisions and assisting firms in their search for venture capital;

7. Promote university policies that encourage research and development and build intellectual infrastructure;
(8) Address quality-of-life concerns to attract new businesses and workers; and

(9) Accomplish the goals set forth in this article and any other goal related to economic development or workforce investment that the commission considers important.

(d) The commission may propose legislation necessary to accomplish its goals.

§SB-3-3. Reexamination of vision and goals.

Every fourth year after the first day of January, two thousand one, the joint commission on economic development, established pursuant to this article, shall conduct a thorough examination of the vision and goals set forth in this article and may recommend legislation relating to the vision and goals to the Legislature.


(a) The joint commission on economic development may review any procedural rules, interpretive rules or existing legislative rules and make recommendations concerning such rules to the Legislature.

(b) The development office and the tourism commission established pursuant to article two, chapter five-b of this code, the economic development authority established pursuant to article fifteen, chapter thirty-one of this code, the bureau of employment programs established pursuant to article four, chapter twenty-one-a of this code, the workforce investment commission established pursuant to article two-c, chapter five-b, West Virginia jobs investment trust, regional planning and development councils, West Virginia rural development council, governor's office of technology and West Virginia
clearinghouse for workforce education shall each file a copy of its legislative rules with the commission as provided for herein. Each agency that proposes legislative rules in accordance to the provisions of article three, three-a or three-b, chapter twenty-nine-a of this code relating to economic development or workforce development shall file the rules with the joint commission at the time the rules are filed with the secretary of state prior to the public comment period or public hearing required in chapter twenty-nine-a of this code.

§5B-3-5. Joint commission on economic development studies.

(a) The joint commission on economic development shall study the following:

(1) The feasibility of establishing common regional configurations for such purposes as local workforce investment areas, regional educational service agencies and for all other purposes the commission considers feasible. The study should review the existing levels of cooperation between state and local economic developers; complete an analysis of possible regional configurations and outline examples of other successful regional systems or networks found throughout the world. If the study determines that the common regional configurations are feasible, the commission shall recommend legislation establishing common regional designations for all purposes the commission considers feasible. In making the designation of regional areas, the study shall take into consideration, but not be limited to, the following:

(A) Geographic areas served by local educational agencies and intermediate educational agencies;

(B) Geographic areas served by post-secondary educational institutions and area vocational education schools;
(C) The extent to which such local areas are consistent with labor market areas;

(D) The distance that individuals will need to travel to receive services provided in such local areas; and

(E) The resources of such local areas that are available to effectively administer the activities or programs;

(2) The effectiveness and fiscal impact of incentives for attracting and growing businesses, especially technology-intensive companies; and

(3) A comprehensive review of West Virginia's existing economic and community development resources and the recommendation of an organizational structure, including, but not limited to, the reorganization of the bureau of commerce and the development office, that would allow the state to successfully compete in the new global economy.

(b) In order to effectuate in the most cost-effective and efficient manner the studies required in this article, it is necessary for the joint commission to assemble and compile a tremendous amount of information. The development office will assist the joint commission in the collection and analysis of this information. The tourism commission established pursuant to article two, chapter five-b of this code, the economic development authority established pursuant to article fifteen, chapter thirty-one of this code, the bureau of employment programs established pursuant to article four, chapter twenty-one-a of this code, the workforce investment commission established pursuant to article two-c, chapter five-b, West Virginia jobs investment trust, regional planning and development councils, West Virginia rural development council, governor's office of technology and West Virginia clearing-house for workforce education all shall provide a copy of the agency's annual report as submitted to the governor in accor-
dance with the requirements set forth in section twenty, article one, chapter five of this code to the West Virginia development office. The development office shall review, analyze and summarize the data contained in the reports, including its own annual report, and annually submit its findings to the joint commission on or before the thirty-first day of December.

(c) The legislative auditor shall provide to the joint commission a copy of any and all reports on agencies listed in subsection (b) of this section, which are required under article ten, chapter four of this code.

(d) The joint commission shall complete the studies set forth in this section and any other studies it determines to undertake prior to the first day of December of each year and may make recommendations, including recommended legislation for introduction during the regular session of the Legislature.

CHAPTER 100

(Com. Sub. for S. B. 123 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, six, seven, eight, ten, twelve, thirteen and twenty, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two, all relating to the West Virginia economic development authority; defining terms;
qualifications and minimum standards of West Virginia capital companies; submission of small business administration capital certificates; authorizing tax credits; application requirements; qualified investments; restrictions on investments; limitations on financial institutions; creating West Virginia venture capital act; defining terms; rule-making authority; and authorizing tax credits.

Be it enacted by the Legislature of West Virginia:

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

Article
1. West Virginia Capital Company Act.
2. West Virginia Venture Capital Act.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-4. Definitions.
§5E-1-6. Qualification of West Virginia capital companies.
§5E-1-7. Minimum standards of qualified West Virginia capital companies.
§5E-1-8. Tax credits.
§5E-1-10. Application requirements.
§5E-1-12. Qualified investments; liquidation or dissolution.
§5E-1-20. Limitation on financial institutions.

§5E-1-4. Definitions.

1 As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:
(a) “Authority” means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) “Capital base” means equity capital or net worth.

(c) “Certified West Virginia capital company” means:

(1) A West Virginia business development corporation created pursuant to article fourteen, chapter thirty-one of this code; or

(2) A profit or nonprofit entity organized and existing under the laws of this state, created for the purpose of making venture or risk capital available to qualified investments that has been certified by the authority.

(d) “Qualified investment” means a debt or equity financing of a West Virginia business, but only if the business is engaged in one or more of the following activities: Manufacturing; agricultural production or processing; forestry production or processing; mineral production or processing, except for conventional oil and gas exploration; service industry; transportation; research and development of products or processes associated with any of the activities previously enumerated above; tourism; computer software development companies engaged in the creation of computer software; and wholesale or retail distribution activities within the state. The investment by a West Virginia capital company in purchases of property to be leased by it, as lessor, through a capital lease to a West Virginia business lessee engaged in one of the above enumerated activities is a qualified investment.

(e) “Qualified West Virginia capital company” means a West Virginia capital company that has been designated by the authority as a qualified capital company under the provisions of section six of this article.

(g) "State" means the state of West Virginia.

(h) "Capital lease" means a lease meeting one or more of the following criteria:

(1) The lease transfers ownership of the property to the lessee at the end of the lease term by the lessee’s exercise of a purchase option which is de minimis in amount; or

(2) The lease term is equal to seventy-five percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last twenty-five percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used; or

(3) Under generally accepted accounting principles, the lessee cannot treat payments to the capital company as payments under an operating lease; or

(4) For federal income tax purposes, the parties are required to treat payments as amortization of principal and interest.

§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 which is not a small business investment company 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. Small business investment company applicants shall submit small business administration capital certificates totaling the funds to be invested. The funds shall not be invested by the applicant until it is designated by the authority as a qualified company. In the case of companies which are not small business investment companies, where the authority does not designate the applicant a qualified company, the 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-1-7. Minimum standards of qualified West Virginia capital companies.

The following requirements apply to all qualified companies:
(a) A qualified company shall be a certified West Virginia capital company.

(b) A qualified company shall have a reasonably accessible business office located within the state of West Virginia, which office has a listed telephone number and is open to the public during normal business hours.

(c) A qualified company which is not a small business investment company shall maintain all of its capital base, except that which has been invested to meet the purposes of this article, in bank accounts and financial institutions which are located in the state of West Virginia or in any other interest bearing instruments with a maturity of less than one year which are obtained from and managed by a West Virginia corporation.

(d) A qualified company shall have a capital base of at least one million dollars, but not greater than four million dollars, which must be raised after the first day of July, one thousand nine hundred eighty-six. If the amount of the investment in a qualified company in any fiscal year exceeds four million dollars, the amount in excess of four million dollars is not eligible for tax credits under this article.

(e) No more than twenty-five percent of each separate capital base of a qualified company which is not a small business investment company shall be in the form of full recourse, interest bearing demand notes, backed by an irrevocable letter of credit or bond from a reputable source, as determined by the authority.

(f) A qualified company’s stated purpose shall be to encourage and assist in the creation, development or expansion of West Virginia businesses.

(g) A qualified company which is not a small business investment company, seeking to establish a separate capital
A qualified company, when soliciting funds for its capital base, shall disclose that no tax credit for the investor's investment will be available until the authority designates as qualified a capital base or an increase to capital base and issues to the qualified company notice of such qualification and a certificate of tax credit.

§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.

(b) (1) 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
10 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 for the fiscal year beginning on the first day of July, two thousand one, the total credits authorized for all companies may not exceed a total of four million dollars: *And provided further,* That the capital base of any 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.

(2) Not more than two million 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. The remainder of the tax credits allowed during the fiscal year shall be allocated by the authority under the provisions of section four, article two of this chapter. 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 thirty 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) are licensed 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 the 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 thirty days of the fiscal year shall be made
available and allocated by the authority under the provisions of section four, article two of this chapter.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity 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, limited liability company, a corporation electing to be treated as a subchapter S corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be divided pursuant to election of the entity’s partners, members, shareholders or owners.

(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; and
6. More than $1,000,000.

§5E-1-10. Application requirements.

(a) Each company shall make application to the authority on forms provided by the authority, which shall set forth:

1. The capitalization level of capital company;
2. The purpose of the company;
3. The names of investors;
4. A process for disclosing to investors the tax credit available pursuant to this article. The disclosure shall clearly set forth that no tax credit will be available until the qualification of the company is granted by the authority and the disclosure of immunity of the state for damages is provided to the investors;
(5) The location of the escrow account, if applicable, which has been established for investors for the period of time between the investment and the qualification of the capital company by the authority;

(6) If applicable, evidence that the company is licensed as a small business investment company; and

(7) That the capital company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies.

(b) An applicant submitting an application pursuant to this section shall continually supplement the application if any material fact contained in the application changes. The authority shall determine if the change constitutes an amendment requiring the consent of the authority pursuant to subdivision (c) of this section.

(c) An applicant may not amend an application submitted pursuant to this section without the written consent of the authority for good cause shown.

§SE-1-12. Qualified investments; liquidation or dissolution.

(a) A qualified West Virginia capital company shall use its capital base to make qualified investments according to the following schedule:

(1) At least thirty-five percent of its capital base within the first year of the date on which the capital company which is not a small business investment company was designated as qualified by the authority;

(2) At least fifty-five percent of its capital base within two years of the date on which the capital company which is not a
small business investment company was designated as qualified by the authority; and

(3) At least seventy-five percent of its capital base within three years of the date on which the capital company which is not a small business investment company was designated as qualified by the authority.

(b) A qualified West Virginia capital company which is not a small business investment company shall maintain its qualified investments for a period of at least five years, except that a qualified West Virginia capital company receiving repayment or return of a qualified investment (exclusive of interest, dividends or other earnings on the investment) shall reinvest the company's repaid or returned cost basis in the investment in a qualified investment which remains outstanding for a period of time at least equal to the remainder of the initial five-year term, the reinvestment to be made within twenty-four months from the date of repayment or return, unless a waiver is obtained from the authority prior to the end of the twenty-four month period: Provided, That the returned amounts may be accumulated for six months before the twenty-four month period commences.

(c) A qualified West Virginia capital company which is not a small business investment company may be dissolved or liquidated only after notice and approval of the dissolution or liquidation by the authority. The authority shall provide by rule a procedure for application for approval to dissolve or liquidate a capital company and the approval shall not be unreasonably withheld, the intention of this subsection being to ensure compliance with subsection (b) of this section. Unless waived by the authority, no dissolution or liquidation of any qualified West Virginia capital company may be made if the dissolution or liquidation would cause the provisions of subsection (b) of this section to be violated.
(d) The authority shall annually audit the certified audit of each qualified company, as required by section sixteen of this article, and the results of the audit shall be used to notify the tax commissioner of any companies that are not in compliance with this section.

(e) A qualified West Virginia capital company that fails to make or maintain qualified investments pursuant to this section shall pay to the tax commissioner a penalty equal to all of the tax credits allowed to the taxpayers investing in the company with interest at the rate of one and one-half percent per month, compounded monthly, from the date the tax credits were certified as allocated to the qualified West Virginia capital company. The tax commissioner shall give notice to the company of any penalties under this section. The tax commissioner may abate the penalty upon written request if the capital company establishes reasonable cause for the failure to make qualified investments. The tax commissioner shall deposit any amounts received under this subsection in the state general revenue fund.


(a) No more than thirty percent of the equity raised by a West Virginia capital company under this article may be invested in any one West Virginia business.

(b) No portion of the capital base of a West Virginia capital company may be invested in a business that is the “alter ego” of that West Virginia capital company. Furthermore, after the effective date of this article no investments shall be made by a West Virginia capital company to a business that is an “alter ego” of the West Virginia capital company: Provided, That this restriction on investments shall not effect any contracts entered into prior to the effective date of this article. For purposes of this subsection, a business is an “alter ego” of the West Virginia
capital company if any one or more of the following criteria are satisfied:

(1) The ownership of the business is substantially related to the ownership of the capital company; or

(2) The board of directors of the business is controlled by the capital company: Provided, That a capital company may control the board of directors of a business if control consists of no more than a simple majority of the board.

(c) No owner, director, officer or employee of a West Virginia capital company may occupy any management position in any business in which that capital company has invested, unless that person is filling that management position in an effort to remedy problems arising from a lack of profitability of the business or from dishonesty of the persons otherwise managing the business.

(d) West Virginia capital companies that are small business investment companies are not governed by the restrictions described in subsections (b) and (c) of this section but shall conform the rules and regulations promulgated by the small business administration.

(e) Each qualified West Virginia capital company may not invest any of its capital base in any of the following businesses:

(1) Banks;

(2) Savings and loan associations;

(3) Credit companies;

(4) Financial or investment advisors;

(5) Brokerage or financial firms;
(6) Other capital companies;

(7) Charitable and religious institutions;

(8) Conventional oil and gas exploration;

(9) Insurance companies;

(10) Residential housing or development; or

(11) Any other business which the authority determines to be against the public interest, the purposes of this article or in violation of any law.

The authority, by the promulgation of rules in accordance with section five of this article, may designate, in addition to those listed in this subsection, other businesses in which capital companies may not invest any of their capital base.

§5E-1-20. Limitation on financial institutions.

Not more than forty-nine percent of the total capital base of any capital company which is not a small business investment company may be owned by banks, savings and loan associations, savings banks or other financial institutions, or any affiliate thereof, as investors. No officer, employee or director of any such financial institution may vote as a member of the board of any capital company formed under the provisions of this article if the matter being voted upon affects the financial institution for which the board member serves as an officer, employee or director.

ARTICLE 2. WEST VIRGINIA VENTURE CAPITAL ACT.

§5E-2-1. Short title.
§5E-2-2. Definitions.
§5E-2-4. Tax credits.
§5E-2-1. Short title.

The article may be cited as the "West Virginia Venture Capital Act".

§5E-2-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(a) "Authority" means the West Virginia economic development authority, provided for in article fifteen, chapter thirty-one of this code.

(b) "State" means the state of West Virginia.


The authority shall propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article.

§5E-2-4. Tax credits.

(a) The total amount of tax credits which may be allocated by the authority pursuant to this article during any fiscal year is equal to the tax credits authorized by section eight, article one of this chapter but unallocated by the authority to qualified West Virginia capital companies during the first thirty days of the fiscal year.

(b) Any investor, including an individual, partnership, limited liability company, corporation or other entity, who
makes an investment in a fund authorized by the authority for
the investment of capital in the West Virginia economy, which
is independently operated by qualified managers and is not
directly or indirectly operated or managed by the investors, is
entitled to a tax credit equal to no more than fifty percent of the
investment in the fund. The percentage and other terms and
conditions of the credit shall be established by the authority
pursuant to rules promulgated in accordance with section three
of this article.

(c) The tax credits allowed by this article shall be taken
after all other credits allowed by chapter eleven of this code.
They 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, a limited liability
company, a corporation electing to be treated as a subchapter S
corporation or any other entity which is treated as a pass
through entity under federal and state income tax laws may be
divided pursuant to election of the partners, members, share-
holders or owners.

(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 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 occurs after the first
day of July, two thousand one.
(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 no more than $50,000;
(2) More than $50,000, but no more than $100,000;
(3) More than $100,000, but no more than $250,000;
(4) More than $250,000, but no more than $500,000;
(5) More than $500,000, but no more than $1,000,000; and
(6) More than $1,000,000.

CHAPTER 101

(H. B. 3238 — By Delegate Mezzatesta)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
adding thereto a new section, designated section nine, all relating to the PROMISE scholarship program; providing that the adjutant general may, in lieu of the tuition payment, pay an amount directly to members of the West Virginia National Guard who are participating in the PROMISE scholarship program; making additional findings with respect to the PROMISE scholarship program; changing definitions; abolishing the board and establishing a board of control; specifying certain elements for inclusion in residency requirements; providing for legislative rules and authorizing emergency rules; requiring submission federal student aid application/needs analysis form and an application for the PROMISE scholarship; providing for coordination of aid programs from all sources; providing that the restriction that the PROMISE scholarship in combination with aid from all other sources does not apply to members of the West Virginia National Guard, and recipients of the Underwood-Smith and engineering, science and technology scholarship programs; clarifying that advanced placement and dual credit course work are not included in the credit hour categories for determining eligibility; replacing "B" average with at least a 3.0 grade point average in required core and electives and other criteria as established by the board; replacing "B" average with appropriate academic progress toward completion of a degree as defined by the board at the undergraduate level; requiring determination and clarification of relationship with other financial aid; allocations to scholarship fund subject to legislative appropriation; providing that nothing requires specific appropriations or guarantees or entitles individuals to awards; and providing for scope and breadth of study of statewide task force on student financial aid to be expanded.

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; that sections two, three, four, five, six,
seven and eight, article seven, chapter eighteen-c of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nine, all to read as follows:

Chapter
15. Public Safety.
18C. Student Loans; Scholarships and State Aid.

CHAPTER 15. PUBLIC SAFETY.

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 may, in lieu of the tuition payment authorized by this section, pay an amount equal to the amount of tuition which otherwise would have been paid, directly to members of the West Virginia National Guard who are participating in the PROMISE scholarship program provided for in article seven, chapter eighteen-c of this code.

(e) 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 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-2. Legislative findings and purpose.
§18C-7-3. Definitions.
§18C-7-4. Appointment of the PROMISE scholarship board of control; compensation; proceedings generally.
§18C-7-5. Powers of the West Virginia PROMISE scholarship board of control.
§18C-7-6. Requirements for rules on PROMISE scholarship program; recommendations by PROMISE scholarship board of control; promulgation by higher education policy commission.

§18C-7-7. West Virginia PROMISE scholarship fund created.

§18C-7-8. PROMISE scholarship supplemental fund recreated, and promulgation of rules.

§18C-7-9. Legislative review and determination of the scope and breadth of the charge of the statewide task force on student financial aid; legislative findings.

§18C-7-2. Legislative findings and purpose.

The Legislature hereby finds and declares that:

(a) The state’s college-going rate does not compare favorably with the member states of the southern regional education board average, nor with the national average;

(b) West Virginia must have an educated work force in order to attract and retain the high wage, high skill jobs of the next century;

(c) A large percentage of West Virginia residents who graduate from the state’s colleges and universities do not work in the state following graduation;

(d) The percentage of West Virginia’s adult population over the age of twenty-five with at least a bachelor’s degree is only fourteen percent and does not compare favorably with the member states of the southern regional education board average or with the national average;

(e) Increases in the level of education increases the income earned by an individual which enhances his or her quality of life;

(f) During the year one thousand nine hundred ninety-seven, an individual holding a bachelor’s degree had an average earned income which was one hundred seventy-seven percent of the average income earned by a high school graduate;
(g) Students at all levels should have an incentive to perform at a high academic level;

(h) There is a need to provide parents with all tools possible to aid them in helping their children understand the importance of high achievement in high school and college;

(i) There is a financial need for many students who wish to attend state institutions of higher education within the state;

(j) The West Virginia higher education grant program is a vitally important source of financial assistance for needy residents of the state and should continue to receive strong financial support; and

(k) It is the intent of this article to establish a West Virginia PROMISE scholarship program to deal effectively with the findings set forth in this section.

§18C-7-3. Definitions.

(a) “Eligible institution” means:

(1) A state institution of higher education as is defined in section two, article one, chapter eighteen-b of this code;

(2) Alderson-Broaddus College, Appalachian Bible College, Bethany College, the College of West Virginia, Davis and Elkins College, Ohio Valley College, Salem International University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia: Provided, That if any institution listed in this subdivision is not regionally accredited, it shall not be included as an eligible institution; or

(3) Any other regionally accredited institution in this state, public or private, approved by the board.
(b) "Board" means the West Virginia PROMISE scholarship board of control of the West Virginia PROMISE scholarship program as provided for in section four of this article.

(c) "Tuition" means the quarter, semester or term charges imposed by a state institution of higher education and all mandatory fees required as a condition of enrollment by all students.

§18C-7-4. Appointment of the PROMISE scholarship board of control; compensation; proceedings generally.

(a) On the effective date of this section, the board of the PROMISE scholarship program is abolished.

As soon as practical after the effective date of this section, the governor shall appoint the West Virginia PROMISE scholarship board of control comprised of fifteen members as follows:

(1) The chairperson of the higher education policy commission or a designee who is a member of the commission;

(2) The chancellor of the higher education policy commission or his or her designee;

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

(4) The secretary of education and the arts;

(5) The state treasurer or his or her designee;

(6) Two members appointed by the governor from a list of six persons nominated by the president of the Senate: Provided, That no more than two nominees may be from the same congressional district;
(7) Two members appointed by the governor from a list of six persons nominated by the speaker of the House of Delegates: Provided, That no more than two nominees may be from the same congressional district; and

(8) Six at-large private sector members representative of the state's business and economic community who have knowledge, skill and experience in an academic, business or financial field.

The ten appointed members shall be residents of the state. The ten appointed members shall be appointed by the governor with the advice and consent of the Senate. No more than six of the ten appointed members may be from the same political party. No more than four of the ten appointed members may be from the same congressional district.

(b) Appointed members shall serve a term of four years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term. A person appointed to fill a vacancy shall be appointed only for the remainder of that term and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or removal pursuant to subsection (e) of this section, an appointed member of the board shall continue to serve until a successor has been appointed and qualified as provided for in subsection (a) of this section. Of the initial appointments, the governor shall appoint three members to a one-year term, two members to a two-year term, three members to a three-year term and two members to a four-year term. Thereafter, all terms shall be for four years.

(c) Members of the board shall serve without compensation, but shall be reimbursed by the office of the secretary of education and the arts for expenses, including travel expenses, actually incurred by a member in the official conduct of the
business of the board at the same rate as is paid the employees of the state.

(d) The secretary of education and the arts is the chairperson and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of business.

(e) The members appointed by the governor may be removed by the governor 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 in accordance with section five, article six, chapter six of this code.

§18C-7-5. Powers of the West Virginia PROMISE scholarship board of control.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or convenient to carry out the purposes and provisions of this article including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article;

(c) To invest any of its funds at the board’s discretion, with the West Virginia investment management board in accordance with the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an
enterprise of a like character and with like aims. Fiduciaries
shall diversify plan investments to the extent permitted by law
so as to minimize the risk of large losses, unless under the
circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary instruments;

(e) To impose reasonable requirements for residency for
students applying for the PROMISE scholarship which shall
include that an eligible student must have completed at least
one half of the credits required for high school graduation in a
public or private high school in this state or have been provided
instruction in the home or other approved place under Exemp-
tion B, section one, article eight, chapter eighteen of this code
for the two years immediately preceding application. However,
nothing in this subdivision may be construed to establish
residency requirements for matriculation or fee payment
purposes at state institutions of higher education;

(f) To contract for necessary goods and services, to employ
necessary personnel and to engage the services of private
persons for administrative and technical assistance in carrying
out the responsibilities of the scholarship program;

(g) To solicit and accept gifts, including bequests or other
testamentary gifts made by will, trust or other disposition,
grants, loans and other aids from any source or to participate in
any other way in any federal, state or local governmental
programs in carrying out the purposes of this article;

(h) To define the terms and conditions under which
scholarships shall be awarded with the minimum requirements
being set forth in section six of this article; and

(i) To establish other policies, procedures and criteria
necessary to implement and administer the provisions of this
article.
§18C-7-6. Requirements for rules on PROMISE scholarship program; recommendations by PROMISE scholarship board of control; promulgation by higher education policy commission.

(a) The board shall recommend a legislative rule to the higher education policy commission to implement the provisions of this article. The higher education policy commission shall promulgate a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code which shall include at least the following provisions:

(1) A requirement that a scholarship will not pay an amount that exceeds the cost of tuition at state institutions of higher education and may include an allowance for books and supplies;

(2) A requirement that the student shall first submit the application/needs analysis form used to apply for federal student aid programs along with an application for the PROMISE scholarship.

(3) The amount of the PROMISE scholarship awarded in combination with aid from all other sources shall not exceed the cost of education at the institution the recipient is attending: Provided, That this restriction does not apply to members of the West Virginia National Guard, recipients of an Underwood-Smith teacher scholarship, and recipients of a West Virginia engineering, science and technology scholarship;

(4) Minimum requirements for eligibility for the scholarship which include:

(A) A provision that a student is only eligible to apply for a scholarship within two years of the time he or she graduates from high school or, in the case of home school students, passes the GED examination: Provided, That if a student has entered
the United States armed services within two years after he or
she graduates from high school, the student is eligible to apply
for a scholarship within seven years of the time he or she enters
military service: Provided, however, That once discharged from
the military, the student is only eligible to apply for one year
from the date of discharge;

(B) For individuals with zero to fifteen credits from an
institution of higher education, excluding credits earned in
advanced placement and dual credit courses while the student
is enrolled in high school, that the individual: (i) Maintain at
least a 3.0 grade point average in the required core and elective
course work necessary to prepare students for success in post-
secondary education at the two-year and baccalaureate levels as
determined by the board; and (ii) meet other criteria as estab-
lished by the board;

(C) For individuals with more than fifteen credits from an
institution of higher education, excluding credits earned in
advanced placement and dual credit courses while the student
is enrolled in high school, that the individual attain and main-
tain appropriate academic progress toward the completion of a
degree at the undergraduate education level as defined by the
board; and

(D) For all individuals, additional objective standards as the
board considers necessary to promote academic excellence and
to maintain the financial stability of the fund;

(5) A provision requiring the student to be enrolled in or in
the process of enrolling in an eligible institution as defined in
section three of this article;

(6) Provisions for making the highest and best use of the
PROMISE scholarship program in conjunction with the West
Virginia prepaid tuition trust act set forth in article thirty,
chapter eighteen of this code;
(7) A determination of whether to require scholarship recipients to repay the amount of their scholarship, in whole or in part, if they choose to work outside the state after graduation;

(8) A determination of whether to set aside a portion of the scholarship funds for targeted scholarships for applicants accepted or enrolled in an engineering program, science program, technology program or other designated programs;

(9) A determination of what other sources of funding for higher education, if any, should be deducted from the PROMISE scholarship award;

(10) A determination and clarification of the relationship of PROMISE scholarship awards to all other aid a student may receive to provide maximum coordination. The determination shall consider the following:

(A) Methods to maximize student eligibility for federal student aid dollars;

(B) A requirement that PROMISE scholarship awards not supplant tuition and fee waivers; and

(C) Clarification of the relationship between the PROMISE scholarship program, tuition savings plans and other state student aid and loan programs;

(11) A method for the award of scholarships within the limits of available appropriations; and

(12) A method for applicants to appeal determinations of eligibility and continuation.

(b) The Legislature hereby declares that an emergency situation exists and, therefore, the policy commission may establish by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, a rule to implement the provisions of this section. If established, the rules shall be
§18C-7-7. West Virginia PROMISE scholarship fund created.

(a) There is hereby created a special revenue fund in the state treasury which shall be designated and known as the "PROMISE scholarship fund". The fund shall consist of all appropriations to the fund from the West Virginia lottery, video lottery, taxes on amusement devices, and any other legislative appropriations, and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. The allocations to the fund shall be subject to appropriation by the Legislature. Nothing in this article shall require any specific level of funding by the Legislature nor guarantee or entitle any individual to any benefit or grant of funds.

(b) The board may expend the moneys in the fund to implement the provisions of this article.

§18C-7-8. PROMISE scholarship supplemental fund recreated, and promulgation of rules.

(a) The Legislature recognizes that the PROMISE scholarship program may lead to an increased number of individuals attending the state institutions of higher education, and therefore, it may contribute to increases in expenses greater than the additional tuition income generated by increased enrollment. Therefore, there is hereby created a special revenue fund in the state treasury which shall be designated and known as the "PROMISE scholarship supplemental fund". The fund shall consist of all appropriations to the fund and all interest earned from the investment of the fund and any gifts, grants or contributions received by the fund. The board shall expend the moneys in this fund to implement the provisions of this article.
13 and may only expend the moneys for state institutions of higher education.

15 (b) The board shall promulgate rules for administering the fund in accordance with article three-a, chapter twenty-nine-a of this code. The rules shall include the following:

18 (1) Provisions for distributing the moneys from the fund to state institutions of higher education: Provided, That the funds shall be divided among the state institutions of higher education in a reasonable manner to reflect the actual distribution of PROMISE scholarship students among the institutions; and

23 (2) A procedure for submitting a budget request to the governor: Provided, That nothing in this article shall require any appropriation by the Legislature.

§18C-7-9. Legislative review and determination of the scope and breadth of the charge of the statewide task force on student financial aid; legislative findings.

1 (a) The Legislature made findings and established goals for post-secondary education as set forth in section one-a, article one, chapter eighteen-b of this code which were enacted following an in-depth study of the needs of the state for a strong system of post-secondary education at the regular session of the Legislature, two thousand. 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. Among the greatest needs identified were to improve the levels of adult functional literacy, increase degree production, develop a system of comprehensive community and technical college education, expand access to graduate educa-
tion and increase funding for the system of higher education generally so it has the needed capacity to pursue the state’s public policy agenda.

(b) The Legislature finds that the many various programs for student financial aid, state and federal, are vital parts of a system that will enable the state to meet its objectives to expand and diversify the state’s economy, increase the competitiveness of the state’s workforce and the availability of professional expertise, improve the levels of post-secondary educational attainment of the state’s residents and significantly improve the level of adult functional literacy in the state. Therefore, the Legislature hereby directs the statewide task force on student financial aid pursuant to section nine, article fourteen, chapter eighteen-b of this code to amend the scope and breadth of its study to adequately consider issues relevant to implementation of the PROMISE scholarship program.

CHAPTER 102

(Com. Sub. for H. B. 2208 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 14, 2001; 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 thirteen, relating to public education; state board of education; integrating character education into the public school curriculum; evaluation and report; and funding.
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 adding thereto a new section, designated section thirteen, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.


(a) The state board shall establish a comprehensive approach to integrate character education into all aspects of school culture, school functions and existing curriculum.

(b) The state board shall require all public schools that operate from preschool to grade twelve to develop and integrate components of character development into their existing curriculum. The schools may incorporate such programs as "life skills", "responsible students", or any other program encompassing any of the following components:

(1) Honesty;
(2) Caring;
(3) Citizenship;
(4) Justice;
(5) Fairness;
(6) Respect;
(7) Responsibility;
(8) Voting;
(9) Academic achievement;
(10) Completing homework assignments;
(11) Improving daily attendance;
(12) Avoiding and resolving conflicts;
(13) Alternatives to violence;
(14) Contributing to an orderly positive school environment;
(15) Participating in class;
(16) Resisting social peer pressures to smoke, drink and use drugs;
(17) Developing greater self-esteem and self-confidence;
(18) Effectively coping with social anxiety;
(19) Increasing knowledge of the immediate consequences of substance abuse;
(20) Increasing knowledge of the consequences of one's actions;
(21) The corrupting influence and chance nature of gambling; and
(22) The value of decent, honest work.

(c) Character education shall be integrated into each public school curriculum by the first day of September, two thousand one.

(d) The state board shall assist county boards in developing in-service training regarding integrated character education as provided in this section.
(e) The state board shall contract with an independent agency to evaluate the results of the character education as defined in this section, and report the results to the legislative oversight commission on education accountability during the September, two thousand three interim meeting period, and every two years thereafter.

(f) The state department of education is encouraged to utilize any existing moneys available to the department for existing character development programs, along with any new funds appropriated for the purposes of this section, to secure the maximum amount of any federal funding available for which the state department is eligible to receive for implementing character development in the schools.

(g) Funding for this initiative shall be derived from the 0313 unclassified account within the state department of education budget.

CHAPTER 103

(H. B. 3023 — By Delegates Stemple, Williams, L. Smith, Mathews, Louisos, Swartzmiller and Fahey)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
definitions; policy prohibiting harassment, intimidation or bullying; liability; immunity; policy training, education and task force; driver education; and allowing certain students to operate a motor vehicle while accompanied by a certified driver education teacher.

Be it enacted by the Legislature of West Virginia:

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

Article
2C. Harassment, Intimidation or Bullying Prohibition.
6. Driver Education.

ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.

§18-2C-1. Legislative findings.
§18-2C-2. Definitions.
§18-2C-3. Policy prohibiting harassment, intimidation or bullying.
§18-2C-4. Immunity.
§18-2C-5. Policy training and education.

§18-2C-1. Legislative findings.

1 The Legislature finds that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The Legislature finds that harassment, intimidation or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student’s ability to learn and a school’s ability to educate its students in a safe, nonterroring environment.

8 The Legislature further finds that students learn by example. The Legislature charges school administrators, faculty,
staff and volunteers with demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation or bullying.

§18-2C-2. Definitions.

As used in this article, “harassment, intimidation or bullying” means any intentional gesture, or any intentional written, verbal or physical act or threat that:

(a) A reasonable person under the circumstances should know will have the effect of:

(1) Harming a student;

(2) Damaging a student’s property;

(3) Placing a student in reasonable fear of harm to his or her person; or

(4) Placing a student in reasonable fear of damage to his or her property; or

(b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

§18-2C-3. Policy prohibiting harassment, intimidation or bullying.

(a) Each county board of education shall establish a policy prohibiting harassment, intimidation or bullying. Each county board has control over the content of its policy as long as the policy contains, at a minimum, the requirements of subdivision (b) of this section. The policy shall be adopted through a process that includes representation of parents or guardians, school employees, school volunteers, students and community members.
(b) Each county board policy shall, at a minimum, include the following components:

(1) A statement prohibiting harassment, intimidation or bullying of any student on school property or at school sponsored events;

(2) A definition of harassment, intimidation or bullying no less inclusive than that in section two of this article;

(3) A procedure for reporting prohibited incidents;

(4) A requirement that school personnel report prohibited incidents of which they are aware;

(5) A requirement that parents or guardians of any student involved in an incident prohibited pursuant to this article be notified;

(6) A procedure for documenting any prohibited incident that is reported;

(7) A procedure for responding to and investigating any reported incident;

(8) A strategy for protecting a victim from additional harassment, intimidation or bullying, and from retaliation following a report;

(9) A disciplinary procedure for any student guilty of harassment, intimidation or bullying; and

(10) A requirement that any information relating to a reported incident is confidential, and exempt from disclosure under the provisions of chapter twenty-nine-b of this code.
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34 (c) Each county board shall adopt the policy and submit a copy to the state superintendent of schools by the first day of December, two thousand one.

37 (d) To assist county boards in developing their policies, the West Virginia department of education shall develop a model policy applicable to grades kindergarten through twelfth. The model policy shall be issued by the first day of September, two thousand one.

42 (e) Notice of the county board’s policy shall appear in any student handbook, and in any county board publication that sets forth the comprehensive rules, procedures and standards of conduct for the school.

§18-2C-4. Immunity.

A school employee, student or volunteer is individually immune from a cause of action for damages arising from reporting said incident, if that person:

(1) In good faith promptly reports an incident of harassment, intimidation or bullying;

(2) Makes the report to the appropriate school official as designated by policy; and

(3) Makes the report in compliance with the procedures as specified in policy.

§18-2C-5. Policy training and education.

(a) Schools and county boards are encouraged, but not required, to form bullying prevention task forces, programs and other initiatives involving school staff, students, teachers, administrators, volunteers, parents, law enforcement and community members.
(b) To the extent state or federal funds are appropriated for these purposes, each school district shall:

1. Provide training on the harassment, intimidation or bullying policy to school employees and volunteers who have direct contact with students; and

2. Develop a process for educating students on the harassment, intimidation or bullying policy.

(c) Information regarding the county board policy against harassment, intimidation or bullying shall be incorporated into each school's current employee training program.


Except as provided in section four of this article, nothing in this article prohibits a victim from seeking redress under any other provision of civil or criminal law.

ARTICLE 6. DRIVER EDUCATION.

§18-6-5. Establishment and maintenance of driver education course; who may enroll; exemption from learner's permit requirement; non-permit student drivers.

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
13 enrolled, instruction shall be limited to the classroom. Pupils
14 who are fifteen years of age and older shall receive instruction
15 and practical training in the operation of motor vehicles on the
16 public streets and highways.

17 Notwithstanding section three-a, article two, chapter
18 seventeen-b of this code, any student who is at least fifteen
19 years of age and is enrolled in a driver education course in
20 accordance with the provisions of this article and the rules that
21 the state board adopts pursuant to section four of this article,
22 may operate a motor vehicle on the roadways of West Virginia
23 while accompanied by a certified driver education teacher.

CHAPTER 104

(Com. Sub. for H. B. 2934 — By Delegates Mezzatesta,
Williams, Perry, Shaver and Beach)

[Passed April 14, 2001; 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; and to further amend said article by
adding thereto two new sections, designated sections five-a and
five-b, all relating to the process for improving education;
authorizing the state board to appoint a monitor at county expense
to cause improvements at seriously impaired school; providing
process for targeting state board and county board resources to
correct deficiencies; providing effect of intervention in school
system on superintendent’s contract; and review of the system of
education performance audits.
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; and that said article be further amended by adding thereto two new sections, designated sections five-a and five-b, all 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.

§18-2E-5a. County superintendent employment contract.

§18-2E-5b. Review of system of education performance audits by the state board; reports to legislative oversight commission on education accountability.

§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
15 code have been filed with the office of the secretary of state
16 before the effective date of this section.

17 (c) *High quality education standards and efficiency standards.* — The state board shall, in accordance with the
18 provisions of article three-b, chapter twenty-nine-a of this code, adopt and periodically review and update high quality education
19 standards for student, school and school system performance and processes in the following areas:

23 (1) Curriculum;

24 (2) Workplace readiness skills;

25 (3) Finance;

26 (4) Transportation;

27 (5) Special education;

28 (6) Facilities;

29 (7) Administrative practices;

30 (8) Training of county board members and administrators;

31 (9) Personnel qualifications;

32 (10) Professional development and evaluation;

33 (11) Student and school performance;

34 (12) A code of conduct for students and employees;

35 (13) Indicators of efficiency; and

36 (14) Any other areas 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 the next grade;
5. Graduation rate;
6. Average class size;
7. Pupil-teacher ratio and number of exceptions to ratio requested by county boards and the 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; and

(16) Percentage of students in secondary and middle schools who are enrolled in advanced placement or honors classes, respectively.

(e) 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.

(f) 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.
(g) 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 shall 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 the information, subject to the provisions of any act or rule 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.

(h) 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 of this article;

(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.

(i) 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
carried out 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. The state board shall reimburse a county board 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.

(j) 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.

(A) These circumstances shall include, but are not limited to, (i) 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; (ii) the failure of a school on conditional accreditation status to meet the objectives and time line of its revised unified school improvement plan; or (iii) the failure to achieve full accreditation by the date specified in the revised plan.

(B) 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 any other improvements that are necessary to correct the impairment.
(C) If the impairment is not corrected by a date certain set by the state board the state board shall appoint a monitor who shall be paid at county expense to cause improvements to be made at the school to bring it to full accreditation status within a reasonable time period as determined by the state board. The monitor’s work location shall be at the school and the monitor shall work collaboratively with the principal. The monitor shall, at a minimum, report monthly to the state board on the measures being taken to improve the school’s performance and the progress being made. The reports may include requests for additional assistance and recommendations required in the judgment of the monitor to improve the school’s performance, including, but not limited to, the need for targeting resources strategically to eliminate deficiencies. If the state board determines that the improvements necessary to provide a thorough and efficient education to the students at the school cannot be made without additional targeted resources, it shall establish a plan in consultation with the county board that includes targeted resources from sources under the control of the state board and the county board to accomplish the needed improvements. Nothing in this section shall be construed to allow a change in personnel at the school to improve school performance, except as provided by law.

(k) 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 the 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.

(l) School system approval. — The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county board: Full approval, temporary approval, conditional approval, or nonapproval.
(1) Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards for student, school and school system performance and processes adopted by the state board and whose schools have all been given full, temporary or conditional accreditation status.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its unified county improvement plan to increase the performance of the school system to a full approval status level. The revised plan shall include objectives, a time line, a plan for evaluation of the success of the improvements, a cost estimate, and a date certain for achieving full approval. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose unified county improvement plan meets the following criteria: (i) The plan has been revised to achieve full approval status by a date certain; (ii) the plan has been approved by the state board; and (iii) the county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its unified county improvement plan or revised unified county improvement plan within a reasonable time period as defined by the state board or fails to meet the objectives and time line of its revised unified county improvement plan or fails to achieve full approval by the date specified in the revised plan. The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the
state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board. Furthermore, whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status. Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. Upon approval of the recommendations by the state board, the recommendations shall be made to the county board. If progress in correcting the emergency, as determined by the state board, is not made within six months from the time the county board receives the recommendations, the state board shall intervene in the operation of the school system to cause improvements to be made that will provide assurances that a thorough and efficient system of schools will be provided. This intervention may include, but is not limited to, the following: (i) Limiting the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and any other areas designated by the state board by rule; (ii) taking any direct action necessary to correct the emergency;
and (iii) declaring that the office of the county superintendent
is vacant.

(m) 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
responsibilities contained in subsection (l) 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.

(n) 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.

§18-2E-5a. County superintendent employment contract.

(a) The Legislature previously granted authority to the state board to intervene in the operation of a county school system in section five, article two-e of this chapter. Part of the authority given is the authority of the state board to declare that the office of the county superintendent is vacant. County boards enter into contracts to employ persons as superintendents for a term of years which creates substantial rights and obligations. Although the statute provides that the state board may declare the office of the county superintendent vacant, the statute did not specifically give the state board authority to void the contract of the county superintendent. The intent of this section is to clarify what contractual obligations continue after removal.

(b) Whenever the state board intervenes in the operation of a school system and the office of the county superintendent is declared vacant pursuant to section five, article two-e of this chapter, the state board may, for any intervention which is instituted after the effective date of this section, void any existing employment contract between the county board and the county superintendent.
20 (c) Whenever a county board elects a county superintendent and enters into a written contract of employment with the superintendent, the county board shall include within the contract a conspicuous clause that informs the superintendent that if the state board intervenes in the operation of the county school system pursuant to section five, article two-e of this chapter, the state board may vacate the office and void the employment contract.

§18-2E-5b. Review of system of education performance audits by the state board; reports to legislative oversight commission on education accountability.

1 (a) The Legislature finds that the system of education performance audits is a valuable tool for determining the quality of education provided in the public schools of our state and for holding schools accountable.

5 (b) Essential goals for a system of education performance audits include the following:

7 (1) To assure that the measures used to evaluate performance are clearly aligned with the education goals and expectations established for student, school and school system performance, including student success in postsecondary education and work;

12 (2) To assure that the measures used reflect a priority for student progress and safety; and

14 (3) To assure that the measures used are limited in number and easily comparable to national performance indicators.

16 (c) The state board shall conduct a review of the system of education performance audits with the objective of achieving the goals set forth in subsection (b) of this section and shall submit progress reports on its work as requested by the
The state board shall submit a final report including, but not limited to, any necessary revisions of its policy on the system of education performance audits and any recommendations for statutory changes to the legislative oversight commission on education accountability by the first day of December, two thousand one.

(d) In conducting its review, the state board shall examine for potential use in the system of education performance audits, any indicators used by various organizations to compare the performance of state education systems.

(e) The state board also shall consider methods for assigning accreditation status, such as weighting the attainment of performance standards, so that high performing schools and school systems can be fully accredited while correcting deficiencies on the process standards: Provided, That process standards affecting the safety of students are weighted equally with the performance standards.
sections one, two, three and seven, article two, chapter eighteen-a of said code; to further amend said article by adding thereto a new section, designated section seven-a; to amend article three of said chapter by adding thereto a new section, designated section one-c; and to amend and reenact sections seven-a, seven-b, eight-b and nineteen, article four of said chapter, all relating generally to school personnel laws; first class permits for superintendents; providing for principals to chair faculty senate process for interviewing prospective professional and paraprofessional employees; requiring superintendent to allow principal opportunity to interview and make recommendations on prospective professional and paraprofessional personnel who may be employed at the school; requiring county board votes on terminations to be on or before the first Monday of April; limiting written notification of dismissal to known or expected circumstances; providing payment for early notice of resignation or retirement at end of school year subject to legislative appropriation; addressing areas of critical need and shortage of professional educators; providing for substitutes continuously assigned to the same classroom for more than one half of a grading period which assignment remains in effect two weeks prior to the end of the grading period to remain in the assignment until the end of the grading period; exceptions; defining teacher and substitute teacher as professional educators for the purposes of the section; providing legislative findings and compelling state interest to expand use of retired teachers as substitutes; providing for county policy to permit expanded use; establishing process to permit retired teacher substitutes to accept employment for unlimited days beginning immediately upon retirement without affecting monthly retirement annuity; prohibiting retired substitute eligibility for additional pension, other benefits and seniority; revising process for employing prospective employable professional personnel; limiting notice of intended or considered transfers to known or expected
circumstances; providing for statewide job bank for professional personnel terminated because of reduction in force and for positions for which counties are seeking applicants; providing for county boards to rescind reductions in force and transfers and restore released employees with certain conditions; limiting transfers within the instructional term beginning five days prior to instructional term and providing certain exceptions; requiring superintendent to report such transfers and making certain legislative findings and intent; requiring postings of openings to be written to ensure largest possible pool of qualified applicants and not require criteria not necessary for successful performance of the job or intended to favor a specific applicant; requiring county boards to compile, update annually and make available a list of professional personnel, areas of certification and seniority; requiring retention of seniority of professional personnel on preferred recall list for purpose of seeking reemployment; providing that reduction or elimination of supplement due to certain circumstances and approved by state board does not require termination of employment contract; directing study and report by state board and secretary of education and the arts to legislative oversight commission on education accountability on policies, programs and statutes relating to the training, certification and licensing of professional educators, including analysis of certain relative to new courses required to be offered in public schools by state board policy; and directing collaboration on funding for additional education and training for reduction in force teachers to gain certification in areas of critical need and shortage.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

(a) Each superintendent shall hold a professional administrative certificate endorsed for superintendent, or a first class permit endorsed for superintendent: Provided, That a superintendent who holds a first class permit may be appointed for only one year, and may be reappointed two times for an additional year each upon an annual evaluation by the board and a determination of satisfactory performance and reasonable progress toward completion of the requirements for a professional administrative certificate endorsed for superintendent: Provided, however, That any candidate for superintendent who possesses an earned doctorate from an accredited institution of higher education, has completed three successful years of teaching in public education and has the equivalent of three years of experience in management or supervision, upon employment by the county board of
education, shall be granted a permanent administrative
certificate and shall be a licensed county superintendent. Any
person employed as assistant superintendent or educational
administrator prior to the twenty-seventh day of June, one
thousand nine hundred eighty-eight, and who was previously
employed as superintendent is not required to hold the
professional administrative certificate endorsed for
superintendent.

(b) Before entering upon the discharge of his or her duties
the superintendent shall file with the president of the board a
health certificate from a reputable physician, on a form
prescribed by the state department of education, certifying that
he or she is physically fit for the duties of his or her office and
that he or she has no infectious or contagious disease; and if the
superintendent, due to accident or illness, becomes
incapacitated to an extent that could lead to a prolonged
absence, the board, upon unanimous vote, may enter an order
declaring the incapacity and it shall appoint an acting
superintendent until such time as a majority of the members of
the board determine that the incapacity no longer exists.
However, an acting superintendent shall not serve as such for
more than one year, or later than the expiration date of the
superintendent’s term, whichever is less, without being
reappointed by the board of education.

(c) Upon finding that the course work needed by a
superintendent who holds a first class permit endorsed for
superintendent is not available or is not scheduled in a manner
at state institutions of higher education which will enable him
or her to complete the normal requirements for a professional
administrative certificate endorsed for superintendent within the
three-year period allowed for appointment and reappointment
under the permit, the state board shall adopt a rule in
accordance with article three-b, chapter twenty-nine-a of this
code, to enable completion of the requirements, or comparable
50 alternative requirements, for a professional administrative
51 certificate endorsed for superintendent.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of
officers; powers and duties.

1 (a) There is established at every public school in this state
2 a faculty senate which shall be comprised of all permanent, full-
3 time professional educators employed at the school who shall
4 all be voting members. Professional educators as used in this
5 section means professional educators as defined in chapter
6 eighteen-a of this code. A quorum of more than one half of the
7 voting members of the faculty shall be present at any meeting
8 of the faculty senate at which official business is conducted.
9 Prior to the beginning of the instructional term each year, but
10 within the employment term, the principal shall convene a
11 meeting of the faculty senate to elect a chair, vice chair and
12 secretary and discuss matters relevant to the beginning of the
13 school year. The vice chair shall preside at meetings when the
14 chair is absent. Meetings of the faculty senate shall be held on
15 a regular basis as determined by a schedule approved by the
16 faculty senate and amended from time to time if needed.
17 Emergency meetings may be held at the call of the chair or a
18 majority of the voting members by petition submitted to the
19 chair and vice chair. An agenda of matters to be considered at
20 a scheduled meeting of the faculty senate shall be available to
21 the members at least two employment days prior to the meeting
22 and in the case of emergency meetings, as soon as possible
23 prior to the meeting. The chair of the faculty senate may
24 appoint such committees as may be desirable to study and
25 submit recommendations to the full faculty senate, but the acts
26 of the faculty senate shall be voted upon by the full body.

27 (b) In addition to any other powers and duties conferred by
28 law, or authorized by policies adopted by the state or county
board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which, in the judgment of the teacher or librarian, will assist him or her in providing instruction in his or her assigned academic subjects or shall be returned to the faculty senate: Provided, That nothing contained herein shall prohibit such funds from being used for programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year shall not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies
or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process shall be chaired by the school principal and must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.
(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual's evaluations.

(12) Each faculty senate shall be provided by its local board of education at least a two-hour per month block of noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.
(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit said strategic plan to the superintendent of the county board of education by the thirtieth day of June, one thousand nine hundred ninety-five, and periodically thereafter pursuant to guidelines developed by the state department of education. Each faculty senate shall encourage the participation of local school improvement councils, parents and the community at large in the development of the strategic plan for each school.

Each strategic plan developed by the faculty senate shall include at least: (A) A mission statement; (B) goals; (C) needs; (D) objectives and activities to implement plans relating to each goal; (E) work in progress to implement the strategic plan; (F) guidelines for the placement of additional staff into integrated classrooms to meet the needs of exceptional needs students without diminishing the services rendered to the other students in integrated classrooms; (G) guidelines for implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
3. Training, Certification, Licensing, Professional Development.
4. Salaries, Wages and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.
§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.
§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.
§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

§18A-2-7a. Statewide job bank.

§18A-2-1. Employment in general.

The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent: Provided, That the superintendent shall provide the principal at the school at which the professional educator or paraprofessional employee is to be employed an opportunity to interview all qualified applicants and make recommendations to the county superintendent regarding their employment: Provided, however, That nothing shall prohibit the timely employment of persons to perform necessary duties. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training and other eligibility classifications as may be required by provisions of this chapter and by state board regulation. In addition to any other information required, the application for any certification or licensing shall include the applicant’s social security number. Professional personnel employed as deputy, associate or assistant superintendents by the board in offices, departments or divisions at locations other than a school and who are directly answerable to the superintendent shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the board. Such professional personnel shall retain seniority rights only in the area or areas in which they hold valid certification or licensure.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for
lack of need; released time; failure of teacher to perform contract or violation thereof.

(a) Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

(b) A teacher’s contract, under this section, shall be for a term of not less than one nor more than three years, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor’s degree, has met the qualifications for the same and the board of education enter into a new contract of employment, it shall be a continuing contract:

Provided, That any teacher holding a valid certificate with less than a bachelor’s degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor’s degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated:
(1) By a majority vote of the full membership of the board on or before the first Monday of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board’s action thereon; or (2) by written resignation of the teacher before that date, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four and one thousand nine hundred eighty-five shall remain in full force and effect: Provided further, That a continuing contract shall not operate to prevent a teacher’s dismissal based upon the lack of need for the teacher’s services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. In case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment in a position for which they are qualified: And provided further, That he or she has not accepted a teaching position elsewhere. Such
reemployment shall be upon a teacher’s preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such teacher or any other rights, privileges or benefits under the provisions of this chapter.

(e) Any teacher who fails to fulfill his contract with the board, unless prevented from so doing by personal illness or other just cause or unless released from such contract by the board, or who violates any lawful provision thereof, shall be disqualified to teach in any other public school in the state for a period of the next ensuing school year and the state department of education or board may hold all papers and credentials of such teacher on file for a period of one year for such violation: Provided, That marriage of a teacher shall not be considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a board of education or request a leave of absence, such resignation or leave of absence to become effective on or before the fifteenth day of July of the same year and after completion of the employment term, may do so at any time during the school year by written notification thereof and any such notification received by a board of education shall automatically extend such teacher’s public employee insurance coverage until the thirty-first day of August of the same year.

(g) Any classroom teacher who gives written notice to the county board of education on or before the first day of February
of the school year of their resignation or retirement from employment with the board at the conclusion of the school year shall be paid five hundred dollars from the "Early Notification of Retirement" line item established for the department of education for this purpose, subject to appropriation by the Legislature. If the appropriations to the department of education for this purpose are insufficient to compensate all applicable teachers, the department of education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional 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) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading
period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one, of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.

(2) A person receiving retirement benefits under the provisions of article seven-a of this chapter or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage;

(B) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis as provided in this subsection;

(C) The policy is effective for one school year only and is subject to annual renewal by the county board;
(D) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis as provided in this subsection; and

(E) Prior to employment of such substitute teacher beyond the post-retirement employment limitations established by the consolidated public retirement board, the superintendent of the affected county submits to the consolidated public retirement board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage and the name or names of the person or persons to be employed pursuant to the policy.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in such employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) With respect to the expanded substitute service provided in this subsection, retired teachers employed as such substitutes are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

(5) Until this subsection is expired pursuant to subdivision (6) of this subsection, the state board, annually, shall report to the joint committee on government and finance prior to the first day of February of each year. Additionally, a copy shall be provided to the legislative oversight commission on education accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on
expanding the use of retired substitute teachers to address areas of critical need and shortage.

(6) The provisions of this subsection shall expire on the thirtieth day of June, two thousand three.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and

(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.
Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section 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.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee
shall be notified in writing by the superintendent on or before
the first Monday in April if he is being considered for transfer
or to be transferred. Only those employees whose consideration
for transfer or intended transfer is based upon known or
expected circumstances which will require the transfer of
employees shall be considered for transfer or intended for
transfer and the notification shall be limited to only those
employees. Any teacher or employee who desires to protest
such proposed transfer may request in writing a statement of the
reasons for the proposed transfer. Such statement of reasons
shall be delivered to the teacher or employee within ten days of
the receipt of the request. Within ten days of the receipt of the
statement of the reasons, the teacher or employee may make
written demand upon the superintendent for a hearing on the
proposed transfer before the county board of education. The
hearing on the proposed transfer shall be held on or before the
first Monday in May. At the hearing, the reasons for the
proposed transfer must be shown.

(b) The superintendent at a meeting of the board on or
before the first Monday in May shall furnish in writing to the
board a list of teachers and other employees to be considered
for transfer and subsequent assignment for the next ensuing
school year. An employee who was not provided notice and an
opportunity for a hearing pursuant to subsection (a) of this
section may not be included on the list. All other teachers and
employees not so listed shall be considered as reassigned to the
positions or jobs held at the time of this meeting. The list of
those recommended for transfer shall be included in the minute
record of such meeting and all those so listed shall be notified
in writing, which notice shall be delivered in writing, by
certified mail, return receipt requested, to such persons’ last
known addresses within ten days following said board meeting,
of their having been so recommended for transfer and
subsequent assignment and the reasons therefor.
39 (c) The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and such period of suspension shall not exceed thirty days unless extended by order of the board.

44 (d) The provisions of this section respecting hearing upon notice of transfer shall not be applicable in emergency situations where the school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of such school personnel because of the aforementioned condition of the building.

§18A-2-7a. Statewide job bank.

1 The state board shall establish and maintain a statewide job bank to assist the recruitment and reemployment of experienced professional personnel whose employment with county boards has been terminated because of a reduction in force. The job bank shall consist of two parts for each county: (1) A list of the names, qualifications and contact information of all professional personnel who have been terminated because of a reduction in force, except personnel who have requested in writing that they not be listed in the job bank; and (2) a list of professional positions for which the county is seeking applicants. The job bank shall be accessible electronically to each county and to individuals on a read only basis, except that each county shall have the capability of editing information for the county and shall be responsible for maintaining current information on the county lists.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1c. Study of training, certification and licensing; report to legislative oversight commission on education accountability at December, 2001, interim meetings; collaboration on sources of funding for
education and training for reduction in force; teacher to gain additional certification in areas of critical need and shortage.

(a) The Legislature finds that the training, certification and licensing of professional educators is not well coordinated with the employment laws of the state particularly with respect to the middle school grade levels. The Legislature further finds that the statutes place responsibility for the training, certification and licensing of professional educators with the state board of education after consultation with the secretary of education and the arts. Therefore, the Legislature hereby directs the state board and the secretary of education and the arts to undertake a study of the policies, programs and statutes relating to the training, certification and licensing of professional educators and to report their findings, conclusions and recommendations along with any necessary legislation for improving the coordination of the programs, policies and statutes with the needs of the public schools of this state to the legislative oversight commission on education accountability at its December, two thousand one, interim meeting. The study and recommendations shall also include an analysis of the cost and availability of certified teachers, along with recommended solutions, for any new courses required by state board policy to be offered in the public schools.

(b) The Legislature finds that there is a need to address areas of critical need and shortage for professional educators and that an expeditious approach for doing so is through the upgrading of the education and training of fully certified teachers who because of declining enrollment can no longer be employed in their area of certification and licensure. Therefore, the state superintendent, the vice chancellor for administration, the chancellor of the higher education policy commission shall collaborate with the governor’s workforce development office on other potential sources of funds to assist professional
32 educators whose contract of employment with a county board of education were not renewed due to a reduction in force to gain additional certification in areas of critical need and shortage.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

18A-4-7b. Calculation of seniority for professional personnel.

§18A-4-8b. Seniority rights for school service personnel.

§18A-4-19. Alteration of contract.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.

(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

(c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:

(1) Appropriate certification and/or licensure;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work and/or degree level in the relevant field and degree level generally;

(4) Academic achievement;
(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following criteria:

(1) Appropriate certification and/or licensure;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;

(6) Receiving an overall rating of satisfactory in evaluations over the previous two years; and

(7) Seniority.

e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant’s qualifications.
(f) The seniority of classroom teachers, as defined in section one, article one of this chapter, with the exception of guidance counselors, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed.

(g) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(h) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

(i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random
selection system established by the employees and approved by
the board shall be used to determine the priority if two or more
employees accumulate identical seniority: Provided, That when
two or more principals have accumulated identical seniority,
decisions on reductions in force shall be based on
qualifications.

(j) Whenever a county board is required to reduce the
number of professional personnel in its employment, the
employee with the least amount of seniority shall be properly
notified and released from employment pursuant to the
provisions of section two, article two of this chapter. The
provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be
reduced who are employed under a temporary permit shall be
properly notified and released before a fully certified employee
in such a position is subject to release;

(2) An employee subject to release shall be employed in
any other professional position where such employee is
certified and was previously employed or to any lateral area for
which such employee is certified and/or licensed, if such
employee's seniority is greater than the seniority of any other
employee in that area of certification and/or licensure;

(3) If an employee subject to release holds certification
and/or licensure in more than one lateral area and if such
employee's seniority is greater than the seniority of any other
employee in one or more of those areas of certification and/or
licensure, the employee subject to release shall be employed in
the professional position held by the employee with the least
seniority in any of those areas of certification and/or licensure;
and
If, prior to the first day of August of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

For the purpose of this article, all positions which meet the definition of classroom teacher as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions the county board of education shall adopt a policy by the thirty-first day of October, one thousand nine hundred ninety-three, and may modify said policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state board shall compile a report and submit same to the legislative oversight commission on education accountability by the thirty-first day of December, one thousand nine hundred ninety-three, and by such date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting such a policy, the board shall give consideration to the rank of each position in terms of title, nature of responsibilities, salary level, certification and/or licensure and days in the period of employment.
(1) After the fifth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence; and

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students: Provided, That the county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the fifth day prior to the beginning of the instructional term. The Legislature finds that it is not in the best interest of the students particularly in the elementary grades to have multiple teachers for any one grade level or course during the instructional term. It is the intent of the Legislature that the filling of positions through transfers of personnel from one professional position to another after the fifth day prior to the beginning of the instructional term should be kept to a minimum.

(m) All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification
and/or licensure, the employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position.

(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification and/or licensure.

(o) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices which shall be subject to the following:

(A) The notices shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) The notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and
(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period;

(3) If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period;

(4) A position held by a certified and/or licensed teacher who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall
be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified and/or licensed and agrees to the reassignment.

(r) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

(s) The county board shall compile, update annually on the first day of July and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

§18A-4-7b. Calculation of seniority for professional personnel.

Notwithstanding any other provision of this code to the contrary, seniority for professional personnel as defined in section one, article one, chapter eighteen-a of this code shall be calculated pursuant to the provisions of section seven-a of this article as well as the following: Provided, That any recalculation of seniority of a professional personnel employee that may be required in order to remain consistent with the
provisions contained herein shall be calculated retroactively, but shall not be utilized for the purposes of reversing any decision that has been made or grievance that has been filed prior to the effective date of this section:

(a) A professional employee shall begin to accrue seniority upon commencement of the employee’s duties.

(b) An employee shall receive seniority credit for each day the employee is professionally employed regardless of whether the employee receives pay for that day: Provided, That no employee shall receive seniority credit for any day the employee is suspended without pay pursuant to section eight, article two of this chapter: Provided, however, That an employee who is on an approved leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

(c) Any professional employee whose employment with a county board of education is terminated either voluntarily or through a reduction-in-force shall, upon reemployment with the same board of education in a regular full-time position, receive credit for all seniority previously accumulated with the board of education at the date the employee’s employment was terminated.

(d) Any professional employee whose employment has been terminated through reduction in force and whose name is on the preferred recall list shall retain all accumulated seniority for the purpose of seeking reemployment with the county from which he or she was terminated and nothing in this section may be construed to the contrary.

(e) Any professional employee employed for a full employment term but in a part-time position shall receive seniority credit for each day of employment prorated to the proportion of a full employment day the employee is required to work: Provided, That nothing herein allows a regular
full-time employee to be credited with less than a full day of
seniority credit for each day the employee is employed by the
board: Provided, however, That this calculation of seniority for
part-time professional personnel is prospective and does not
reduce any seniority credit accumulated by any employee prior
to the effective date of this section: Provided further, That for
the purposes of this section a part-time employee shall be
defined as an employee who is employed less than three and
one-half hours per day.

§18A-4-8b. Seniority rights for school service personnel.

(a) A county board shall make decisions affecting
promotions and the filling of any service personnel positions of
employment or jobs occurring throughout the school year that
are to be performed by service personnel as provided in section
eight of this article, on the basis of seniority, qualifications and
evaluation of past service.

(b) Qualifications shall mean that the applicant holds a
classification title in his category of employment as provided in
this section and must be given first opportunity for promotion
and filling vacancies. Other employees then must be considered
and shall qualify by meeting the definition of the job title as
defined in section eight of this article, that relates to the
promotion or vacancy. If requested by the employee, the board
must show valid cause why an employee with the most
seniority is not promoted or employed in the position for which
he or she applies. Applicants shall be considered in the
following order:

(1) Regularly employed service personnel;

(2) Service personnel whose employment has been
discontinued in accordance with this section;
(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;

(4) Substitute service personnel; and

(5) New service personnel.

(c) The county board may not prohibit a service employee from retaining or continuing his employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title listed in section eight of this article shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries. Paraprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides.

(e) For purposes of determining seniority under this section an employee’s seniority begins on the date that he or she enters into his assigned duties.
(f) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(g) Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of the job vacancies shall include the job description, the period of employment, the amount of pay and any benefits and other information that is helpful to the employees to understand the particulars of the job. After the five-day minimum posting period all vacancies shall be filled within twenty working days from the posting date notice of any job vacancies of established existing or newly created positions. Job postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.
86 (h) All decisions by county boards concerning reduction in
87 work force of service personnel shall be made on the basis of
88 seniority, as provided in this section.

89 (i) The seniority of any service personnel shall be
determined on the basis of the length of time the employee has
been employed by the county board within a particular job
classification. For the purpose of establishing seniority for a
preferred recall list as provided in this section, when an
employee has been employed in one or more classifications, the
seniority accrued in each previous classification shall be
retained by the employee.

(j) If a county board is required to reduce the number of
employees within a particular job classification, the employee
with the least amount of seniority within that classification or
grades of classification shall be properly released and employed
in a different grade of that classification if there is a job
vacancy: Provided, That if there is no job vacancy for
employment within the classification or grades of classification,
he or she shall be employed in any other job classification
which he or she previously held with the county board if there
is a vacancy and shall retain any seniority accrued in the job
classification or grade of classification.

(k) If, prior to the first day of August after a reduction in
force or transfer is approved, the reason for any particular
reduction in force or transfer no longer exists as determined by
the county board in its sole and exclusive judgment, the board
shall rescind the reduction in force or transfer and shall notify
the affected employee in writing of his or her right to be
restored to his or her former position of employment. Within
five days of being so notified, the affected employee shall
notify the board of his or her intent to return to his or her
former position of employment or the right of restoration to the
former position shall terminate: Provided, That the board shall
not rescind the reduction in force of an employee until all employees with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section. If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the employee who was subject to reduction in force, the position of the released employee shall be posted and filled in accordance with this section.

(l) 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.

(m) All employees whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any lateral position for which the employee is qualified or to a lateral area for which an employee has certification and/or licensure.

(o) Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

(p) The county board shall notify all employees 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 such
employee to notify the county board of any change in the
address of the employee.

(q) No position openings may be filled by the county board,
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.

(r) An employee released from employment for lack of
need as provided in section eight-a or six, article two of this
chapter shall be accorded preferred recall status on the first day
of July of the succeeding school year if the employee has not
been reemployed as a regular employee.

(s) 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. Further, employees denied promotion
or employment in violation of this section shall be awarded the
job, pay and any applicable benefits retroactively to the date of
the violation and shall be paid entirely from local funds.
Further, the board is liable to any party prevailing against the
board for any court reporter costs including copies of
transcripts.

§18A-4-19. Alteration of contract.

(a) Notwithstanding the provisions of section seven-a of
this article relating to professional personnel or any other
section of this code to the contrary, any alteration of an
employment contract of a professional educator who is
employed for more than two hundred days, which alteration
changes the number of days in the employment term, shall not
be deemed a creation of a new position, nor shall such alteration
require the posting of the position.
Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to the contrary, any alteration of an employment contract of a professional educator which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-a of this article, shall not require termination of said employment contract as set forth in sections two and eight-a, article two of this chapter, nor shall it be deemed a creation of a new position, nor shall such alteration require the posting of the position.

(b) Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-b of this article, shall not require termination of said employment contract as set forth in sections six and eight-a, article two of this chapter, nor shall it be
AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county boards of education; meetings; increasing compensation for board members; authorizing compensation of county board members who serve on administrative councils of multi-county vocational center for attending council meetings; providing that such meetings are not counted under the limit of compensable board meetings per fiscal year; and limiting compensable council meetings.

Be it enacted by the Legislature of West Virginia:

That section four, article five, 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 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.
(a) The board shall meet on the first Monday of July, and
upon the dates provided by law for the laying of levies, and at
any other times the board fixes upon its records. At any meeting
as authorized in this section and in compliance with the
provisions of article four of this chapter, the board may employ
qualified teachers, or those who will qualify by the time of
entering upon their duties, necessary to fill existing or
anticipated vacancies for the current or next ensuing school
year. At a meeting of the board, on or before the first Monday
of May, the superintendent shall furnish in writing to the board
a list of those teachers to be considered for transfer and
subsequent assignment for the next ensuing school year; all
other teachers not listed are considered as reassigned to the
positions held at the time of this meeting. The list of those
recommended for transfer shall be included in the minute
record and the teachers listed shall be notified in writing. The
notice shall be delivered in writing, by certified mail, return
receipt requested, to the teachers’ last-known addresses within
ten days following the board meeting, of their having been
recommended for transfer and subsequent assignment.

(b) Special meetings may be called by the president or any
three members, but no business may be transacted other than
that designated in the call.

(c) In addition, a public hearing shall be held concerning
the preliminary operating budget for the next fiscal year not less
than ten days after the budget has been made available to the
public for inspection, and within a reasonable time prior to the
submission of the budget to the state board for approval.
Reasonable time shall be granted at the hearing to any person
who wishes to speak regarding any part of the budget. Notice of
the hearing shall be published as a Class I legal advertisement
in compliance with the provisions of article three, chapter fifty-
nine of this code.
(d) A majority of the members constitutes the quorum necessary for the transaction of official business.

(e) Board members may receive compensation at a rate not to exceed one hundred sixty dollars per meeting attended, but they may not receive pay for more than fifty meetings in any one fiscal year: Provided, That board members who serve on an administrative council of a multi-county vocational center may also receive compensation for attending up to twelve meetings of the council at the same rate as for meetings of the board. Meetings of the council are not counted as board meetings for purposes of determining the limit on compensable board meetings.

(f) Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

(g) When, by a majority vote of its members, a county board considers it a matter of public interest, the board may join the West Virginia school board association and the national school board association, and may pay the dues prescribed by the associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance may be made except upon sworn itemized statements.
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 waiving the requirement that persons providing instruction in the home have at least four years more formal education.

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.

1 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 the requirement of a formal education at least four years higher than the most
academically advanced child is waived until the first day of
July, two thousand three;

(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
superintendent 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.

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity for school attendance 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
authorized 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 108

(Com. Sub. for S. B. 676 — By Senators Unger and Snyder)

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the school building authority; and authorizing distribution of money for building or improvement projects over a period of time or years as the work progresses.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility’s school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the
jurisdiction of the state board. In addition, upon application by
the state board or the administrative council of an area
vocational educational center established pursuant to article
two-b of this chapter, the authority may allocate and expend
under this section moneys for school major improvement
projects proposed by the state board or an administrative
council for school facilities under the direct supervision of the
state board or an administrative council, respectively: Provided,
That the authority may not expend any moneys for a school
major improvement project proposed by the state board or the
administrative council of an area vocational educational center
unless the state board or an administrative council has
submitted a ten-year school major improvement plan, to be
updated annually, pursuant to section sixteen of this article:
Provided, however, That the authority shall, before allocating
any moneys to the state board or the administrative council of
an area vocational educational center for a school improvement
project, consider all other funding sources available for the
project.

(c) An amount that is no more than two percent of the
moneys that are determined by the authority to be available for
distribution during the current fiscal year from: (1) Moneys
paid into the school building capital improvements fund
pursuant to section ten, article nine-a of this chapter; (2) the
issuance of revenue bonds for which moneys in the school
building debt service fund are pledged as security; (3) moneys
paid into the school construction fund pursuant to section six of
this article; and (4) any other moneys received by the authority,
except moneys deposited into the school major improvement
fund, shall be set aside by the authority as an emergency fund
to be distributed in accordance with the guidelines adopted by
the authority.

(d) The remaining moneys determined by the authority to
be available for distribution during the then current fiscal year
(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the
investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor: Provided, That in the event a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the subject lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.
(f) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this subsection, any county board failing to expend money within three years of the allocation to the county board shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this subsection until the county board is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution.

(g) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the moneys are distributed: Provided, however, That any moneys allocated to a county board and not distributed to that county board shall be deposited in an account to the credit of that county board, the principal amount to remain to the credit of and available to the county board for a period of two years. Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the school major improvement fund in that fiscal year.

(h) No local matching funds may be required under the provisions of this section. However, the responsibilities of the
county boards of education to maintain school facilities are not
negated by the provisions of this article. To be eligible to
receive an allocation of school major improvement funds from
the authority, a county board must have expended in the
previous fiscal year an amount of county moneys equal to or
exceeding the lowest average amount of money included in the
county board's maintenance budget over any three of the
previous five years and must have budgeted an amount equal to
or greater than the average in the current fiscal year: Provided,
That the state board of education shall promulgate rules relating
to county boards' maintenance budgets, including items which
shall be included in the budgets.

(i) Any county board may use moneys provided by the
authority under this article in conjunction with local funds
derived from bonding, special levy or other sources.
Distribution to a county board, or to the state board or the
administrative council of an area vocational educational center
pursuant to subsection (b) of this section, may be in a lump sum
or in accordance with a schedule of payments adopted by the
authority pursuant to guidelines adopted by the authority.

(j) Funds in the school construction fund shall first be
transferred and expended as follows:

Any funds deposited in the school construction fund shall
be expended first in accordance with an appropriation by the
Legislature. To the extent that funds are available in the school
construction fund in excess of that amount appropriated in any
fiscal year, the excess funds may be expended in accordance
with the provisions of this article. Any projects which the
authority identified and announced for funding on or before the
first day of August, one thousand nine hundred ninety-five, or
identified and announced for funding on or before the
thirty-first day of December, one thousand nine hundred
ninety-five, shall be funded by the authority in an amount
which is not less than the amount specified when the project was identified and announced.

(k) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(l) County boards shall submit all designs for construction of new school buildings to the school building authority for review and approval prior to preparation of final bid documents: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(m) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a project for more than three years; and

(2) The authority may not approve the use of more than fifty percent of the revenue for projects to be funded over more than one year.
CHAPTER 109

(Com. Sub. for S. B. 476 — By Senators Hunter, Unger, Caldwell, Rowe, Burnette, Redd, Fanning, Helmick, Ross and Sharpe)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-n, relating to providing access to information technology for visually impaired individuals through the procurement of compatible technology by the state purchasing division; setting forth findings and a statement of policy; providing definitions; providing for development of nonvisual access standards; and requiring nonvisual access requirements in all future state contracts for procurement of information technology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10N. INFORMATION TECHNOLOGY ACCESS FOR THE BLIND AND VISUALLY IMPAIRED.

§18-10N-1. Findings; policy.
§18-10N-2. Definitions.
§18-10N-3. Purchasing to develop access standards; access clause to be included in contracts.
§18-10N-4. Procurements by the purchasing division.

§18-10N-1. Findings; policy.
The Legislature finds that the use of interactive display terminals by state agencies is becoming a widespread means of access for employees and the public to obtain information available electronically, but that presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired. Individuals who are blind or visually impaired have the right to full participation in the life of the state, including the use of advanced technology which is purchased by the state for use by employees, program participants and members of the general public. The Legislature also recognizes that technological advances allow interactive control of computers and use of the information by visually impaired persons, but that nonvisual access is dependent on the purchase of hardware and software that is compatible with technology used for nonvisual access.

§18-10N-2. Definitions.

The following words have the meanings indicated:

(a) “Access” means the ability to receive, use and manipulate data and operate controls included in information technology.

(b) “Blind or visually impaired individual” means an individual who:

(1) Has a visual acuity of 20/200 or less in the better eye with corrective lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(2) Has a medically indicated expectation of visual deterioration; or

(3) Has a medically diagnosed limitation in visual functioning that restricts the individual’s ability to read and
write standard print at levels expected of individuals of comparable ability.

(c) "Information technology" means all electronic information processing hardware and software, including telecommunications.

(d) "Nonvisual" means synthesized speech, Braille and other output methods not requiring sight.

(e) "State agency" means the state or any of its departments, agencies or boards or commissions.

(f) "Telecommunications" means the transmission of information, voice, or data by radio, video or other electronic or impulse means.

§18-10N-3. Purchasing to develop access standards; access clause to be included in contracts.

(a) On or before first day of September, two thousand one, the purchasing division of the department of administration shall develop nonvisual access standards for information technology systems employed by state agencies that:

(1) Provide blind or visually impaired individuals with access to information stored electronically by state agencies by ensuring compatibility with adaptive technology systems so that blind and visually impaired individuals have full and equal access when needed; and

(2) Are designed to present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use, such as the use of text-only options.
(b) The purchasing division shall consult with state agencies and representatives of individuals who are blind or visually impaired in developing the nonvisual access standards described in subsection (a) of this section and the procurement criteria described in section four of this article.

(c) The head of each state agency shall establish a written plan and develop any proposed budget requests for implementing the nonvisual access standards for its agency at facilities accessible by the public.

§18-10N-4. Procurements by the purchasing division.

(a) On or before first day of January, two thousand two, the division shall approve minimum standards and criteria to be used in approving or rejecting procurements by state agencies for adaptive technologies for nonvisual access uses.

(b) Nothing in this article shall require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired. Nothing in this article shall be construed to require the purchase of nonvisual adaptive equipment by a state agency.

(c) Notwithstanding the provisions of subsection (b) of this section, the applications, programs and underlying operating systems, including the format of the data, used for the manipulation and presentation of information shall permit the installation and effective use of and shall be compatible with nonvisual access software and peripheral devices.

(d) Compliance with the procurement requirements of this section with regard to information technology purchased prior to the first day of July, two thousand one, shall be achieved at the time of procurement of an upgrade or replacement of existing information technology equipment or software.
AN ACT to repeal article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles three-a and three-f, chapter eighteen-b of said code; to repeal sections six and eleven, article nine of said chapter; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact sections one and three, article eleven-c, chapter eighteen of said code; to amend and reenact section four-a, article twenty-three of said chapter; to amend and reenact sections one-a, three and six, article one, chapter eighteen-b of said code; to amend and reenact sections two and six, article one-a of said chapter; to amend and reenact sections four and five, article one-b of said chapter; to amend and reenact sections one and four, article two-a of said chapter; to further amend said chapter by adding thereto two new articles, designated articles two-b and two-c; to amend and reenact sections seven and eight, article three-c of said chapter; to amend and reenact sections four and eight, article five of said chapter; to amend and reenact sections one, two-a and four-a, article six of said chapter; to amend and reenact section four, article seven of said chapter; to amend and reenact sections one, two, three, four, five, seven and eight, article nine of said chapter; to amend and reenact sections one and eight, article ten of said chapter; to further amend said chapter by adding thereto a new article, designated article eleven-a; to amend article fourteen of said chapter by adding thereto a new section, designated section
five-a; to amend and reenact section four, article five, chapter eighteen-c of said code; to amend and reenact sections one and twelve, article three-a, chapter twenty-nine-a of said code; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to education; public education; post-secondary education; colleges, universities and community and technical colleges; rules for travel and moving expenses; West Virginia university hospital and West Virginia health system generally; clarifying membership on board of directors; higher education employee retirement plans generally; definitions; contribution levels; establishing a standardized retirement policy for all state higher education employees; requiring higher education policy commission to study vendors of retirement products and report to joint committee on pensions and retirement by certain date; establishing legislative intent; goals for post-secondary education; deleting requirement that classified employee salaries be compared to those in peer institutions; administration; transfer of powers, duties, rules, property and obligations; higher education rule making generally; authorizing transfer of property between commission and governing boards; transferring rules to commission; authorizing commission to transfer all rules, except legislative rules, to governing boards; clarifying authority of commission to promulgate rules; requiring rule to guide rule-making activities of governing boards; authorizing commission to reclassify certain legislative rules; prohibiting any requirement that reclassified rules be refiled unless amended; requiring commission to file proposed rules with legislative oversight commission on education accountability; designating that certain rules may be refiled as procedural or interpretive rules; changing submission date for institutional compacts; authorizing emergency rule and requiring rule on benchmarks and indicators be filed by certain date; setting specific requirements for rule; clarifying procedure for approval of
certain graduate education programs; powers and duties of higher education policy commission; setting limits on certain capital projects; authorizing commission to make certain appointments; directing commission to assume oversight of certain private education institutions; requiring the commission to make a determination of feasibility of certain recommendations; authorizing promulgation of rule for personnel matters; authorizing promulgation of joint rules; requiring joint rule on tuition and fee policy; requiring a method to allow participation in selection of certain administrative heads of community and technical colleges; authorizing promulgation of necessary rules for administration of state and federal student aid programs; additional duties of vice chancellor for community and technical college education and work force development; authority of chancellor and higher education policy commission to employ vice chancellor for state colleges; deleting certain restrictions on state colleges and freestanding community and technical colleges; deleting certain requirements relating to rules of governing boards and clarifying their rule making process; clarifying terms of members of institutional boards of governors; clarifying terms of faculty and classified employees on institutional boards of governors; deleting obsolete language; higher education employee grievances generally; directing prospective employee grievances to be filed under different procedure after certain date; definitions; placing certain restrictions on state division of personnel related to higher education employee grievances; West Virginia council for community and technical college education generally; legislative findings; legislative intent; definitions; reconstituting joint commission for vocational-technical-occupational education; membership; eligibility; terms; chairperson; reimbursement for expenses; powers and duties of West Virginia council for community and technical college education; chief executive officer; creating state advisory committee of community and technical college
presidents and provosts; chair of advisory committee; West Virginia community and technical college generally; legislative findings; legislative intent; definitions; requiring commission to review and analyze progress of community and technical colleges; requiring analysis to be based on benchmarks and indicators; requiring commission to determine existence of certain conditions relative to community and technical colleges; providing that insufficient funds is not valid reason for lack of progress; requiring annual report to legislative oversight commission on education accountability; requiring certain determinations by commission; authorizing creation of West Virginia community and technical college; requiring study and report to legislative oversight commission on education accountability by certain date on procedures, findings and determinations necessary prior to creation of college; requiring notification to governor, president of Senate, speaker of House of Delegates and legislative oversight commission on education accountability; requiring commission to certify necessary legislation; providing for transfer of certain powers, duties, property, obligations, etc. from certain governing boards to the governing board of the college; creating office of president of college; providing for governing board of college; powers and duties; providing for acting president; district consortia committees required to participate in certain work force development activities; clarifying mission of Potomac state college of West Virginia university; approval of institutional compacts and expenditure schedules for certain community and technical colleges; verifying progress toward goals by certain community and technical colleges; clarifying status of certain community and technical colleges; clarifying responsibility district of Marshall university community and technical college; providing exceptions to bid process; authorizing lease-purchase arrangements by governing boards with approval of the commission; directing the commission to make an annual report on business activities of governing boards; clarifying
membership and terms for state advisory council of faculty; clarifying membership and terms for state advisory council of classified employees; providing definition for institution of higher education for purposes of selecting members of advisory council of classified employees; clarifying appointments of members of certain advisory boards; clarifying membership on boards of governors and certain statewide advisory councils; deleting obsolete language relating to appeal by probationary faculty member of nonretention decision; higher education personnel classification system generally; clarifying authority of commission relating to classification system; definitions; legislative purposes; assignment to pay grades; job descriptions and titles; critical employees; merit increases; deleting obsolete language; salaries of classified employees generally; classified employees salary not to be reduced; defining equitable compensation; providing certain restrictions on appropriations; updating classified employee salary schedule; equitable system of job classification; rules; providing method for distributing salary increases; salary policies; authority to grant salary in excess of salary established by schedule in certain instances; deleting obsolete language; eliminating biennial review of equitable system of job classifications; eliminating inconsistent language on personnel classification conferences and placement on salary schedule of newly hired classified employees; eliminating institutional salary policies and salary increase authorization; tuition and fees generally; tuition and fee goals; collection of fees; authority of governing boards regarding additional registration fees; special capital improvements funds; terms for issuance of revenue bonds; use of revenue bonds proceeds; state autism training center generally; definitions; powers and duties of board of governors; responsibilities of autism training center; providing for advisory board and trainee teams; authorizing for governing boards to enter into property sales and lease back arrangements; deleting authority of senior administrator to promulgate rules for West Virginia higher
education grant program; higher education rule making; definitions; recommendations by legislative oversight commission on education accountability approving rules; and rules severability.

Be it enacted by the Legislature of West Virginia:

That article twenty-six-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three-a, chapter eighteen-b of said code be repealed; that article three-f of said chapter be repealed; that sections six and eleven, article nine of said chapter be repealed; that section eleven, article three, chapter twelve of said code be amended and reenacted; that sections one and three, article eleven-c, chapter eighteen of said code be amended and reenacted; that section four-a, article twenty-three of said chapter be amended and reenacted; that sections one-a, three and six, article one, chapter eighteen-b of said code be amended and reenacted; that sections two and six, article one-a of said chapter be amended and reenacted; that sections four and five, article one-b of said chapter be amended and reenacted; that sections one and four, article two-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto two new articles, designated articles two-b and two-c; that sections seven and eight, article three-c of said chapter be amended and reenacted; that sections four and eight, article five of said chapter be amended and reenacted; that sections one, two-a and four-a, article six of said chapter be amended and reenacted; that section four, article seven of said chapter be amended and reenacted; that sections one, two, three, four, five, seven and eight, article nine of said chapter be amended and reenacted; that sections one and eight, article ten of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eleven-a; that article fourteen of said chapter be amended by adding thereto a new section, designated section five-a; that section four, article five, chapter eighteen-c of said code be amended and reenacted; that sections one and twelve, article three-a, chapter twenty-nine-a of said code be
amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nineteen, all to read as follows:

Chapter

18. Education.
18B. Higher Education.
18C. Student Loans; Scholarships and State Aid.
29A. State Administrative Procedures Act.

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.

(a) 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.

(b) 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.

(c) 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 a higher
education governing board or the higher education policy
commission to be interviewed concerning his or her possible
employment by a higher education governing board, the higher
education policy commission or agent thereof.

(d) 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 a higher education governing
board or the higher education policy commission 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 a higher education
governing board or the higher education policy commission 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 18. EDUCATION.

Article

11C. West Virginia University Hospital and West Virginia Health System.

23. Additional Powers, Duties and Responsibilities of Governing Boards of
State Institutions of Higher Education.

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST
VIRGINIA HEALTH SYSTEM.

§18-11C-1. Definitions.

§18-11C-3. Board authorized to contract with corporation; description to be met by
corporation.

§18-11C-1. Definitions.

1 The following words used in this article shall, unless the
2 context clearly indicates a different meaning, be construed as
3 follows:

4 (a) “Agreement” means the long-term lease and agreement
5 to be entered into between the board and the corporation
6 pursuant to section four of this article;

7 (b) “Assets” means all assets of the board constituting
8 tangible and intangible personal property credited to the
9 hospital on the financial ledgers and equipment inventories of
10 the university at the transfer date, and as more particularly or
11 additionally identified or supplemented in the agreement,
12 excluding all hospital funds deposited with the state treasurer;

13 (c) For the purposes of this article, “board” or “board of
14 trustees” means the West Virginia university board of
15 governors;
(d) "Corporation" means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article;

(e) "Corporation employees" means employees of the corporation;

(f) "Directors" means the board of directors of the corporation;

(g) "Existing facilities" means the West Virginia university hospital and clinics, other than those used for student health and family practice, presently existing at the West Virginia university medical center in Morgantown and owned and operated by the board;

(h) "Health science schools" means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university considered by the board to be health sciences;

(i) "Hospital" means the inpatient and outpatient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the existing facilities and any other health care service components of the West Virginia university medical center at Morgantown rendering patient care services and more particularly identified by the agreement;

(j) "Liabilities" means all liabilities, except those specifically excluded by section four of this article, credited to the hospital on the financial ledgers of the university at the transfer date and as more particularly or additionally identified, supplemented or limited in the agreement;
(k) "Medical personnel" means both university personnel and corporation employees;

(l) "New facilities" means a new hospital facility and out-patient clinics, appurtenant facilities, equipment and necessary services to be acquired, built, operated or contracted for by the corporation on property leased from the board within Monongalia County, West Virginia, pursuant to the agreement;

(m) "Transfer date" means the first day of July, one thousand nine hundred eighty-four, or any later date agreed upon by the board and the corporation and filed with the secretary of state;

(n) "University" means West Virginia university;

(o) "University personnel" means those employees of the board or the university for whose services the corporation contracts with the board or the university, as appropriate; and

(p) "West Virginia health system" or "system" means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description set forth in section three-a of this article.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the vice chancellor for health sciences of the higher education policy commission,
one designee of the board: Provided, That if the position of vice
chancellor for health sciences has not been filled, the board
shall designate one additional member to serve until the
position is filled, the vice president for health sciences of the
university, the vice president for administration and finance of
the university, the chief of the medical staff of the hospital, the
dean of the school of medicine of the university, the dean of the
school of nursing of the university and the chief executive
officer of the corporation, all of whom shall serve as ex officio
members of the directors, a representative elected at large by
the corporation employees and seven directors to be appointed
by the West Virginia health system board. The West Virginia
health system board shall select and appoint the seven
appointed members in accordance with the provisions of section
six-a, article five-b, chapter sixteen of this code: Provided,
however, That the current directors of the corporation shall
continue to serve until they resign or their term expires. On and
after the effective date of this section, the seven appointed
directors shall be appointed by the system board for staggered
six-year terms. The system board shall select all of the
appointed members in a manner which assures geographic
diversity and assures that at least two members are from each
congressional district.

(b) The corporation shall report its audited records publicly
and to the joint committee on government and finance at least
annually.

(c) Upon liquidation of the corporation, the assets of the
corporation shall be transferred to the board for the benefit of
the university.

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES
OF GOVERNING BOARDS OF STATE INSTITUTIONS
OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for
employees; payroll deductions; authority to match
employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the “additional retirement plan” relating to state higher education employees, means the “higher education retirement plan” provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section continues to participate in that plan and may not elect to participate in any other state retirement plan. Any such retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The higher education policy commission, on behalf of the governing boards and itself, shall contract for a retirement plan for its employees, to be known as the “higher education retirement plan”. The governing boards and higher education policy commission shall make periodic deductions from the salary payments due the employees in the amount they are required to contribute to the higher education retirement plan, which deductions shall be six percent.

(c) The higher education policy commission and the governing boards, with policy commission approval, may contract for a supplemental retirement plan for any or all of their employees to supplement the benefits the employees otherwise receive. The governing boards and higher education policy commission may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) The higher education policy commission shall conduct a study of the feasibility of offering multiple vendors of retirement products and services to be offered for the benefit of higher education employees. The commission shall report the findings of the study, along with a plan for offering multiple
vendors for the employees, to the joint committee on pensions
and retirement no later than the first day of December, two
thousand one. Upon approval by the joint committee on
pensions and retirement, the commission shall provide a choice
of vendors to their employees. Any selection of vendors made
by the commission shall be determined according to a request
for proposal issued pursuant to the provisions of section four,
article five, chapter eighteen-b of this code.

(e) Each governing board and the higher education policy
commission, by way of additional compensation to their
employees, shall pay an amount equal to the contributions of
the employees into the higher education retirement plan from
funds appropriated to the board or commission for personal
services.

(f) Each participating employee has a full and immediate
vested interest in the retirement and death benefits accrued from
all the moneys paid into the higher education retirement plan or
a supplemental retirement plan for his or her benefit. Upon
proper requisition of a board or the higher education policy
commission, the auditor shall periodically issue a warrant,
payable as specified in the requisition, for the total
contributions so withheld from the salaries of all participating
employees and for the governing board’s or higher education
policy commission’s matching funds.

(g) Any person whose employment commences on or after
the effective date of this section, and who is eligible to
participate in the higher education retirement plan, shall
participate in that plan and is not eligible to participate in any
other state retirement system. The additional retirement plan
contracted for by the governing boards prior to the effective
date of this section remains in effect unless changed by the
higher education policy commission. Nothing in this section
may be construed to consider employees of the governing
boards as employees of the higher education policy
commission, nor is the higher education policy commission
responsible or liable for retirement benefits contracted by, or on
behalf of, the governing boards.

(h) It is the intent of the Legislature in amending and
reenacting this section during its two thousand one regular
session solely to:

(1) Maintain the current retirement plans offered to state
higher education employees in their current form;

(2) Clarify that employees of the higher education policy
commission are participants in the higher education retirement
plan;

(3) Codify the current contribution levels of the governing
boards, the higher education policy commission and their
employees toward the present higher education retirement plan;

(4) Make mandatory the contribution levels of the
governing boards and higher education policy commission;

(5) Establish a standardized retirement policy for all state
higher education employees as determined by the policy
commission;

(6) Clarify the application and purposes of the additional
and supplemental retirement plans previously provided for in
this section; and

(7) Remove obsolete and archaic language.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
1A. Compact with Higher Education for the Future of West Virginia.

(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 work force 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 work force 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 developing 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
in institutional procedures. It also is not well equipped to address cross-cutting issues such as regional economic and work force 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.

(5) The system of public higher education should be open and accessible to all persons, including persons with disabilities and other persons with special needs.

(b) Compact with higher education. — In pursuance of these findings, it is the intent of the Legislature to engage higher education in a statewide compact for the future of West Virginia, as provided in article one-a of this chapter, that focuses on a public policy agenda that includes, but is not limited to, the following:

(1) Diversifying and expanding the economy of the state;

(2) Increasing the competitiveness of the state's work force and the availability of professional expertise by increasing the number of college degrees produced to the level of the national
average and significantly improving the level of adult functional literacy; and

(3) Creating a system of higher education that is equipped to succeed at producing these results.

(c) Elements of the compact with higher education. — It is the intent of the Legislature that the compact with higher education include the following elements:

(1) A step-by-step process, as provided in articles one-b and three-c of this chapter, which will enable the state to achieve its public policy agenda through a system of higher education equipped to assist in producing the needed results. This process includes, but is not limited to, separate institutional compacts with state institutions of higher education that describe changes in institutional missions in the areas of research, graduate education, admission standards, community and technical college education and geographical areas of responsibility to 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, work force 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 work force 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
(B) Collaboration, coordination and interaction between public and post-secondary education, the governor’s council on literacy and the governor’s work force investment office to promote the effective and efficient utilization of work force 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, work force 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 work force 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 work force 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.

(4) 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.

(5) 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.

(6) 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 work force needs of the state.
(7) Faculty 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-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the higher education policy commission and governing boards.

1 (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 seventeenth day of June, two thousand, 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 until the first day of July, two thousand one, 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 until the first day of July, two thousand one. 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 until the first day of July, two thousand one, 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 until the first day of July, two thousand one, 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 or the governing boards 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) Title to all real property transferred to or vested in the interim governing board pursuant to this section of the code is hereby transferred to the commission effective the first day of July, two thousand one. The board of governors for each institution may request that the commission transfer title to the board of governors of any real property specifically identifiable with that institution or the commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property. The title to any real property that is jointly utilized by institutions or for statewide programs under the jurisdiction of the commission shall be retained by the commission.

(f) Ownership of or title to any other property, materials, equipment, or supplies obtained or purchased by the interim governing board or the previous governing boards on behalf of an institution is hereby transferred to the board of governors of that institution effective the first day of July, two thousand one.

(g) Each valid agreement and obligation previously transferred or vested in the interim governing board and which was undertaken or agreed to on behalf of an institution or institutions is hereby transferred to the board of governors of the institution or institutions for whose benefit the agreement
was entered into or the obligation undertaken, effective the first day of July, two thousand one. The obligations contained in revenue bonds issued by the previous governing boards under the provisions of section eight, article ten, chapter eighteen-b and article twelve-b, chapter eighteen of this code are hereby transferred to the commission and each institution shall transfer to the commission those funds the commission determines are necessary to pay that institution’s share of bonded indebtedness. The obligations contained in revenue bonds issued on behalf of a state institution of higher education pursuant to any other section of this code is hereby transferred to the board of governors of the institution on whose behalf the bonds were issued.

(h) All orders, resolutions, policies and rules adopted or promulgated by the respective board of trustees, board of directors, or interim governing board and in effect immediately prior to the first day of July, two thousand one, are hereby transferred to the commission effective the first day of July, two thousand one, and shall continue in effect until rescinded, revised, altered or amended or transferred to the governing boards by the commission as set out in this section and in section six, article one of this chapter.

(i) The commission may, in its sole discretion, transfer any rule, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the commission.

(j) 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.
(k) 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. Rule making.

(a) Effective the first day of July, two thousand one, the commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code.

(b) The commission shall promulgate a rule to guide the development and approval of rules, guidelines and other policy statements made by the governing boards. The rule promulgated by the commission shall include, but is not limited to, the following provisions:

(1) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected;

(2) Designation of a single location where all proposed and approved rules, guidelines and other policy statements can be accessed by the public;

(3) A procedure to maximize internet access to all proposed and approved rules, guidelines and other policy statements, to the extent technically and financially feasible.
(c) On and after the effective date of this section, and notwithstanding any other provision of this code to the contrary, no rule heretofore required by law to be promulgated as a legislative rule may be considered to be a legislative rule for the purposes of article three-a, chapter twenty-nine-a of this code, except for the following:

(1) The legislative rule required by subsection (c), section eight, article one of this chapter;

(2) The legislative rule required by section eight-a, article one of this chapter;

(3) The legislative rule required by section two, article one-a of this chapter;

(4) The legislative rule required by section four, article one-b of this chapter;

(5) The legislative rule required by section one, article three, chapter eighteen-c of this code;

(6) The legislative rule required by section one, article four, chapter eighteen-c of this code;

(7) The legislative rule required by section seven, article five, chapter eighteen-c of this code; and

(8) The legislative rule required by section one, article six, chapter eighteen-c of this code.

(d) On or after the effective date of this section and before the first day of October, two thousand one, notwithstanding any other provision of this code to the contrary, any rule heretofore promulgated as a legislative rule which was not required specifically by law to be promulgated as a legislative rule, or any rule previously required to be a legislative rule by statute
but reclassified by subsection (c) of this section, may be
reclassified by the commission either as an interpretive rule or
as a procedural rule. The commission shall notify in writing the
legislative oversight commission on education accountability of
such reclassification and shall file such notice with the office of
the secretary of state to be published in the state register.

(e) Nothing in this section may be construed to require that
any rule reclassified under this section be promulgated again
under the procedures set out in article three-a, chapter twenty-nine-a unless the rule is amended or modified.

(f) The commission shall cause a copy of any rule it
proposes to promulgate, adopt, amend or repeal under the
authority of this article to be filed with the legislative oversight
commission on education accountability created in said article
three-a, chapter twenty-nine-a of this code.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE
FUTURE OF WEST VIRGINIA.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

§18B-1A-6. Graduate education.

§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 time line 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 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. The first annual updates shall be submitted on or before the fifteenth day of November, two thousand one, and succeeding updates shall be submitted on the fifteenth day of November of each year thereafter;

(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 by legislative rule 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.

(1) The Legislature finds that an emergency exists, and therefore the commission shall file as an emergency rule the rule pertaining to benchmarks and indicators that was filed with the office of the secretary of state on the twenty-sixth day of December, two thousand. The commission shall file a legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to replace the emergency rule no later than the first day of November, two thousand one.

(2) The legislative rule shall set forth at the least the following as pertains to all state institutions of higher education:

(A) The indicators to be used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to:

(i) Provide measurable evidence that the pursuits of the institution are targeting the educational needs of the citizens of the state and the components of the compacts and master plans;

(ii) Delineate the goals and benchmarks for an institution so that the commission can precisely measure the degree to which progress is being made toward achieving the goals for post-secondary education provided in section one-a, article one of this chapter; and
(iii) Distinctly identify specific goals within the master plan or compact of an institution that are not being met, or toward which sufficient progress is not being made.

(3) In addition to any other requirement, the legislative rule shall set forth at the least the following as pertains to community and technical college education:

(A) Benchmarks and indicators which are targeted to identify:

(i) The degree to which progress is being made by institutions toward meeting the goals for post-secondary education and the essential conditions provided in section three, article three-c of this chapter;

(ii) Information and data necessary to be considered by the policy commission in making the determination required by section three, article two-c of this chapter;

(iii) The degree to which progress is being made in the areas considered by the commission for the purpose of making the determination required by section three, article two-c of this chapter; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the commission that an institution’s progress toward achieving the goals for post-secondary education and the essential conditions is so deficient that implementation of the provisions of section four, article two-c of this chapter is warranted and necessary.

(g) The commission shall approve the master plans developed by the boards of governors and the institutional boards of advisors pursuant to subsection (b), section four,
§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 economy 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 concentrated 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.

(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) 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 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) The commission may designate one of the institutions listed in subsection (d) of this section to develop and implement no more than four of its own masters level programs as a pilot project: Provided, That the selected institution shall move
toward and achieve regional accreditation of the masters program within a reasonable time as determined by the commission. The institution shall be selected based on the following:

(I) Sufficient credentialed faculty to offer quality programs in the areas selected;

(II) Sufficient unmet demand for the programs; and

(III) Sustainable unmet demand based on generally accepted projections for population growth in the region served by the institution.

The programs authorized by this clause may not be restricted by the provisions of subdivisions (1), (2) and (3) of this subsection nor by the provisions of subsection (e) of this section.

(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 this need is not being met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan a master's degree program in education focused on teaching in subject area fields in which the demand is not being met. 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.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of higher education policy commission.

§18B-1B-5. Employment of chancellor for higher education; office; powers and duties generally; employment of vice chancellors.

§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
(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 compacts;

(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 Legislature 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;

(E) 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 nor may an institution participate directly or
indirectly with any public or private entity in any capital project
which has the potential to exceed one million dollars in cost;

(14) Draw upon the expertise available within the
governor’s work force investment office and the West Virginia
development office as a resource in the area of work force
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 explanation of the standard which the governing boards shall
communicate 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 requirements 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 requirements for a 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;
(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 work force 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 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 allege to have been planned on or before the seventeenth day of June, two thousand. 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 findings of fact and recommendations for proposed legislation to condense, simplify and streamline the fee schedule and the use of fees or other money collected by state institutions of higher education;

(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;

(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;

(37) Make appointments to boards and commissions where this code requires appointments from the state college system board of directors or the university of West Virginia system board of trustees which were abolished effective the thirtieth day of June, two thousand. Notwithstanding any provisions of this code to the contrary, the commission may appoint one of its own members or any other citizen of the state as its designee. The commission shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(38) Assume the powers set out in section five, article three of this chapter. The rules previously promulgated by the state college system board of directors pursuant to that section are hereby transferred to the commission and shall continue in effect until rescinded, revised, altered or amended by the commission;
(39) Examine and determine the feasibility of recommendations contained in the *Implementation Board Report* presented to the commission in January, two thousand one, and, at the discretion of the commission, create the advantage valley community college network to enhance provision of community and technical college education in the responsibility areas of Marshall university, West Virginia state college and West Virginia university institute of technology;

(40) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission 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;

(41) 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;

(42) Promulgate a joint rule establishing tuition and fee policy. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the commission considers appropriate; and
(43) Develop a method for the council, or members thereof, to participate in the selection of administrative heads of the community and technical colleges.

(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, including promulgation of any rules formerly vested in the previous governing boards in relation to those 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.

(d) The commission is authorized to withdraw specific powers of any 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 board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the 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.

(e) 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 work force development who serves at the will and pleasure of the chancellor. The duties of this position include serving as the chief executive officer of the West Virginia council for community and technical college education created pursuant to article two-b of this chapter, and such other duties as assigned by law or by the commission. 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 work force development, which
vice chancellor for community and technical colleges shall
become the vice chancellor for community and technical
college education and work force development. It is the duty
and responsibility of the vice chancellor for community and
technical college education and work force 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 institu-
tional 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
may 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 on matters related to or of interest and
concern to these institutions;

(2) Advise, assist and consult regularly with the institu-
tional presidents and institutional boards of governors of each
state college;
(3) Serve as an advocate and spokesperson for the state 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;

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) On and after the first day of July, two thousand one, to assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter: Provided, that nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. 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;

(5) 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.

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 abolished.

(b) Effective the first day of July, two thousand one, a 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 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 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 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 from the institutional classified employees duly elected by the classified employees; 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
47 thirtieth day of June, two thousand one, and appointed pursuant to section one-a, article six of this chapter.

49 (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.

59 (d) The student member shall serve for a term of one year. 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.

63 (e) The faculty member shall serve for a term of two years. The term beginning in July, two thousand one, ends on the thirtieth day of June, two thousand three. Thereafter, the term shall begin on the first day of July. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

69 (f) The member representing classified employees shall serve for a term of two years. 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. Members representing classified employees are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

76 (g) The appointed lay citizen members shall serve terms of four years each and shall be eligible to succeed themselves for no more than one additional term.
(h) 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, except the election of officers for the term beginning in July, two thousand one shall be made that July. Each 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.

(i) 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.

(j) No person shall be eligible for appointment to membership on a board of governors who is an officer, employee or member of any other 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 representa-
(k) 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.

(l) 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.

(m) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. The members of the 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 board of governors and the institution under this section shall be paid from funds allocated to the institution for that purpose.


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 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 responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(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 work force 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 com-
completed at state institutions of higher education under its jurisdiction 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 employees in institutional-level planning and decision making when those groups are affected;

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission, 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;

(k) Administer a system for the hearing of employee grievances and appeals therefrom: Provided, That after the first day of July, two thousand one, and notwithstanding any other provisions of this code to the contrary, the procedure established in article six-a, chapter twenty-nine of this code shall be the exclusive mechanism for hearing prospective employee grievances and appeal: Provided, however, That in construing the application of article six-a, chapter twenty-nine to grievances of higher education employees, the following shall apply:
(1) "Chief administrator" means the president of a state institution of higher education as to those employees employed by the institution and the chancellor as to those employees employed by the commission;

(2) The state division of personnel shall not be a party to nor have any authority regarding a grievance initiated by a higher education employee; and

(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one.

(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
164 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;

167 (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;

177 (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

189 (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 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-1. Legislative findings; intent; purpose.


§18B-2B-3. Joint Commission for vocational-technical-occupational education reconstituted as West Virginia council for community and technical college education; jurisdiction of higher education policy commission; supervision of chancellor; chief executive officer.

§18B-2B-4. Appointment, composition and terms of council.

§18B-2B-5. Meetings and compensation.


§18B-2B-8. State advisory committee of community and technical college presidents and provosts.

§18B-2B-1. Legislative findings; intent; purpose.

(a) The Legislature hereby finds that:

(1) The goals, objectives and purposes contained in Senate Bill 653, passed during the regular legislative session in two thousand, reflected the research findings available to the Legislature at the time; since then, however, additional research indicates that, while Senate Bill 653 moves in the appropriate direction of independent accreditation and meeting essential conditions for public community and technical colleges, the legislation does not take the final steps that are considered to be necessary by independent researchers. This position is clearly demonstrated by the recent research findings and recommendations cited below:

(A) "West Virginia: A Vision Shared! Economic Development: A Plan for West Virginia's Future", hereinafter cited in this article and article two-c of this chapter as the Market Street Report, is a research document commissioned by the West
Virginia council for community and economic development to assess the economic competitiveness of the state. The report makes a number of findings and recommendations important to public community and technical college education:

(i) The state needs to adopt and implement a specific focus on technical education; in particular, it needs to move away from the traditionally isolated and limited vocational programming towards a systematic approach of teaching technical skills that employers need today;

(ii) The state needs to establish a strong technical education system that is separate from the university system and is responsive to the needs of business throughout the state;

(iii) The state needs to establish as a high level priority the training and retraining of its working age adults to help them acquire and maintain the competitive skills they need to succeed in today's economy; and

(iv) The state needs to emphasize the role of lifelong learning as a critical piece of its overall education and training system if the state is to make the transition to the new economy.

(B) The Report to the Legislative Oversight Commission on Education Accountability, hereinafter cited in this article and article two-c as the McClenney Report, is a study required by provisions of Senate Bill 653 and conducted by Dr. Kay McClenney. The research found that:

(i) The participation rate in West Virginia community and technical college education is substantially lower than will be necessary if the state is to achieve its goals for economic development and prosperity for its citizens;

(ii) The low visibility of the component community and technical colleges effectively restricts access for the West
Virginians who most need encouragement to participate in post-
secondary education and training;

(iii) It is not clear that the parent institutions of the compo-
ment community colleges actually embrace the community
college mission;

(iv) The community and technical college developmental
education programs are under serving by far the evident needs
of the population, especially as that service relates to nontradi-
tional students;

(v) Adults over age twenty-five are under represented in the
community and technical college student populations;

(vi) Technical education program development and
enrollment are not at the levels necessary to serve the needs of
the state;

(vii) Independent accreditation and the essential conditions
required by Senate Bill 653 are necessary, but not sufficient
alone to provide a strong enough tool to accomplish the state’s
goal to strengthen community and technical college education;
and therefore,

(viii) The state needs to create a community college support
capacity at the state level that will bring leadership, coordina-
tion, technical support, advocacy and critical mass to a state-
wide network of local community and technical college
campuses.

(C) The Report and Recommendations of the Implementation
Board to the West Virginia Higher Education Policy
Commission, hereinafter cited in this article and article two-c of
this chapter as the Implementation Board Report, is a study
required by Senate Bill 653 to determine the most effective and
efficient method to deliver community and technical college
services in the responsibility areas of Marshall university, West
Virginia state college and West Virginia university institute of
technology. The Implementation Board Report states its goals
and vision for community and technical college education in the
advantage valley region as one of a dynamic, vital and vibrant
community college network which offers:

(i) Affordable, quality training and education to students;

(ii) Represents a recognized path of choice to success in the
knowledge economy for thousands of West Virginians; and

(iii) Provides West Virginia businesses with the highly
skilled work force necessary to meet their evolving needs in the
global knowledge economy.

(D) In furtherance of their goals, the Implementation Board
Report recommended formation of the advantage valley
community college network:

(i) To enhance economic development through coordinated
leadership and a delivery system for education and training
initiatives;

(ii) To provide accountability through a separate compact
and through independent accreditation of each of the affected
community and technical colleges; and

(iii) To enhance education opportunities for the citizens of
the area and assist in overcoming the barrier of accessibility in
higher education.

(b) Based on the recent research cited above, the Legislature
further finds that:

(1) The recommendations of the Market Street Report
clearly point out the shortcomings of the state’s current
(2) The research, findings, vision and goals set forth in the 
McClenney Report and the Implementation Board Report are 
noteworthy and, although written, in part, to address specific 
institutions, have broad application statewide for community 
and technical colleges;

(3) The research shows that:

(A) A need exists to enhance community and technical 
college education in West Virginia through the delivery of 
services that meet the goals of this chapter and that are deliv-
ered pursuant to the process for meeting the essential conditions 
established in section three, article three-c of this chapter;

(B) A need exists for statewide leadership, coordination, 
and support for the work of the community and technical 
colleges and for advocacy for the public priorities these 
institutions are charged to address;

(C) Community and technical colleges need to be efficient, 
avoiding duplication and the burden of bureaucracy while 
recognizing fiscal realities;

(D) Community and technical colleges need a high degree 
of flexibility and local autonomy to preserve and expand their 
ability to respond rapidly and effectively to local or regional 
needs;

(E) Community and technical colleges need state-level 
support and leadership that recognize differences among 
regions of the state and among institutions and accept the 
reality that institutions are at different stages in their develop-
ment and have different challenges and capabilities;
(F) Clear benchmarks and regular monitoring are required to assess the progress of community and technical colleges toward meeting the established goals and for meeting the essential conditions, including independent accreditation, established in this chapter;

(4) Certain acts to streamline accountability, to make maximum use of existing assets to meet new demands and target funding to initiatives designed to enhance and reorient existing capacity, and to provide incentives for brokering and collaboration require that the role of the joint commission for vocational-technical-occupational education be reexamined.

(c) Legislative intent. — The intent of the Legislature in enacting this article is to address the research findings cited above by reconstituting the joint commission for vocational-technical-occupational education as the West Virginia council for community and technical college education in order to reorient the mission, role and responsibilities consistent with and supportive of the mission, role and responsibilities of the commission, the goals for post-secondary education and accountability for assisting the public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission in achieving the state’s public policy agenda.

(d) Purpose. — The purpose of this article is to provide for the development of a leadership and support mechanism for the community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission to assist them in meeting the essential conditions and in the step-by-step implementation process for achieving the goals for community and technical college education as provided for in article three-c of this chapter, and to promote coordination and collaboration among secondary and post-secondary vocational-technical-occupational and adult
basic education programs as provided for in this chapter and chapter eighteen of this code. The focus of this leadership and support mechanism is to encourage development of a statewide mission to raise education attainment, increase adult literacy, promote work force and economic development, and ensure access to secondary and post-secondary education for the citizens of the state while maintaining the local autonomy and flexibility necessary to the success of community and technical education.


The following words when used in this article have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) "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.

(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) "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.

(d) "Vice chancellor" means the vice chancellor for community and technical college education and work force
development pursuant to section five, article one-b of this chapter.

(e) "West Virginia Council for Community and Technical College Education" or "council" means the council established pursuant to section three of this article. On and after the effective date of this article, any reference in this code to the joint commission for vocational-technical-occupational education means the West Virginia council for community and technical college education.

§18B-2B-3. Joint commission for vocational-technical-occupational education reconstituted as West Virginia council for community and technical college education; jurisdiction of higher education policy commission; supervision of chancellor; chief executive officer.

(a) Effective the first day of July, two thousand one, the West Virginia joint commission for vocational-technical-occupational education is reconstituted as the West Virginia council for community and technical college education. Any reference in this code to the joint commission for vocational-technical-occupational education means the West Virginia council for community and technical college education. The council has all the powers and duties assigned by law to the joint commission for vocational-technical-occupational education prior to the effective date of this section and such other powers and duties as may be assigned by law or by the commission.

(b) The council is subject to the jurisdiction of the commission established in article one-b of this chapter. The vice chancellor serves as chief executive officer of the council.
§18B-2B-4. Appointment, composition and terms of council.

1 (a) On the effective date of this section, the joint commission for vocational-technical-occupational education is reconstituted as the West Virginia council for community and technical college education and all terms of members appointed by the governor prior to the effective date of this section expire upon the appointment by the governor of all the members required to be appointed by this section.

2 (b) The council is comprised of eight members selected as follows:

3 (1) Three members appointed by the governor, with the advice and consent of the Senate;

4 (2) Two members appointed by the governor from a list of six persons nominated by the president of the Senate: Provided, That no more than two nominees may be from the same congressional district and no more than three may be from the same political party;

5 (3) Two members appointed by the governor from a list of six persons nominated by the speaker of the House of Delegates: Provided, That no more than two nominees may be from the same congressional district and no more than three may be from the same political party; and

6 (4) The assistant superintendent for technical and adult education of the state department of education who serves as an ex officio, nonvoting member of the council;

7 (c) The governor may, but is not required to, reappoint any person who was a member of the joint commission immediately prior to the effective date of this section: Provided, That the individual selected is otherwise eligible to serve.
(d) All appointed members shall be citizens of the state, shall represent the public interest and shall be persons who understand and are committed to achieving the goals and objectives set forth in section one-a, article one of this chapter, the essential conditions for community and technical college education programs and services set forth in article three-c of this chapter, and the goals for secondary and post-secondary vocational-technical-occupational and adult basic education in the state. The appointed members shall represent the interests of the business, labor and employer communities and demonstrate knowledge of the education needs of the various regions, attainment levels and age groups within the state.

(e) The governor may not appoint any person to be a member of the council who is an officer, employee or member of an advisory board of any state college or university, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, 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. No individual may serve on the council who is engaged in providing, or employed by a person or company whose primary function is to provide, work force development services and activities. Of the members appointed by the governor, no more than four thereof may belong to the same political party and no more than three may be appointed from any congressional district.

(f) Members of the council 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.
§18B-2B-5. Meetings and compensation.

(a) The vice chancellor shall call the initial meeting of the council and preside until a chairperson is selected. The members shall elect a chairperson from among the persons appointed by the governor. The council shall hold at least eight meetings annually 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 work force development, economic development, and vocational education in the state.

(b) The council shall hold an annual meeting each June for the purpose of electing officers for the next fiscal year. At the annual meeting, the council shall elect from its appointed members 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 one, or as soon thereafter as practicable. The chairperson and other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting: Provided, however, That the terms of officers elected in July, two thousand one, begin upon election and end on the thirtieth day of June, two thousand two. The chairperson of the board may serve no more than two consecutive terms as chair.

(c) Members of the council 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 the ex officio member of the council who is an employee of the state shall be reimbursed by the employing agency.

(d) A majority of the members constitutes a quorum for conducting the business of the council.

(a) The council has all the powers and duties assigned to the joint commission prior to the effective date of this article as set forth in the provisions of section two, article two-b, chapter eighteen of this code and such other powers and duties as may be assigned by law or by the commission. Authority granted under that section to the joint commission as the sole agency responsible for the administration of vocational-technical-occupational education in the state is hereby transferred to the council.

(b) Under the supervision of the commission, the council has the following powers and duties:

(1) To develop and recommend to the commission for inclusion in the statewide public agenda, a plan for raising education attainment, increasing adult literacy, promoting work force and economic development and ensuring access to advanced education for the citizens of West Virginia;

(2) To provide statewide leadership, coordination, support, and technical assistance to the community and technical colleges and to provide a focal point for visible and effective advocacy for their work and for the public agenda adopted by the commission;

(3) To review and approve all institutional compacts for the community and technical colleges prior to their submission to the commission for final approval;

(4) To consider and submit to the commission a budget for community and technical colleges that:

(A) Includes recommended appropriations;
(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals established in its institutional compact;

(5) To make recommendations to the commission for approval of the administration and distribution of the independently-accredited community and technical college development account;

(6) To design and recommend to the commission a plan of strategic funding to strengthen capacity for support of community and technical college education in all areas of the state;

(7) To foster coordination among all state-level, regional and local entities providing post-secondary vocational education or work force development and to coordinate all public institutions and entities that have a community and technical college mission;

(8) To assume on behalf of the commission the principal responsibility for overseeing the implementation of the step-by-step process for achieving independent accreditation and for meeting the essential conditions pursuant to article three-c of this chapter;

(9) To participate in the selection of administrative heads of the community and technical colleges as directed by the commission;

(10) To provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;
(11) To provide a mechanism that serves two or more institutions to facilitate joint problem solving in areas including, but not limited to:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for work force training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(12) To provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in the state;

(13) To assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each of the community and technical colleges is responsible;

(14) To develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(15) To serve aggressively as an advocate for development of a seamless curriculum, to cooperate with the governor’s p-20 council of West Virginia to remove barriers relating to transfer and articulation between and among community and technical colleges, state colleges and universities, and public education, preschool through grade twelve, and to encourage the most efficient utilization of available resources. The council for community and technical college education is responsible for
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advising the commission on these issues and making appropriate recommendations;

(16) To assist the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans;

(17) To assist the commission in developing a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(18) To review and approve all institutional master plans for the community and technical colleges prior to their submission to the commission for final approval;

(19) To recommend to the commission policies or rules for promulgation that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(20) To recommend to the commission a set of benchmarks and performance indicators to apply to community and technical colleges to measure institutional progress toward meeting the goals as outlined in section one-a, article one of this chapter and in meeting the essential conditions established in article three-c of this chapter;

(21) To assist the commission staff in developing a separate section on community and technical colleges for inclusion in the higher education report card as defined in section eight, article one-b of this chapter. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (20) of this subsection;
If approved by the commission, to facilitate creation of the advantage valley community college network recommended by the *Implementation Board Report* as well as any other regional networks of affiliated community and technical colleges if requested by all affected institutions in that region as the commission finds to be appropriate and in the best interests of the citizens to be served;

To 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:

(A) Policies to strengthen vocational-technical-occupational and adult basic education;

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

To distribute 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.

In distributing funds the council shall use the following guidelines:

(A) The board of education shall continue to be the fiscal agent for federal vocational education funding;

(B) For the fiscal years beginning on the first day of July, two thousand one and two thousand two, the percentage split of the federal allocation for vocational education between the West Virginia board of education and the commission shall
remain the same as the percentage split that was distributed to the board of education and the commission for the fiscal year that began on the first day of July, two thousand;

(C) For the fiscal year beginning on the first day of July, two thousand three and thereafter, the percentage split between the board of education and the commission shall be determined by rule promulgated by the council under the provisions of article three-a, chapter twenty-nine-a of this code: Provided, That the council shall first obtain the approval of the board of education before proposing a rule;

(25) To collaborate, cooperate and interact with 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 Work Force Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(26) To coordinate 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;

(27) To analyze and report to the commission and the West Virginia board of education 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.

(28) To promote the delivery of vocational-technical-occupational, adult basic education and community and technical college education programs in the state which
emphasize the involvement of business, industry and labor organizations;

(29) To promote public participation in the provision of vocational-technical-occupational, adult basic education and community and technical education at the local level, with an emphasis on programs which involve the participation of local employers and labor organizations;

(30) To promote equal access to quality vocational-technical-occupational, adult basic education and community and technical college 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, and criminal offenders serving in correctional institutions;

(31) To meet annually between the months of October and December with the advisory committee of community and technical college presidents and provosts created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest; and

(32) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article.

(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 or by the commission, the council has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

The vice chancellor is the chief executive officer of the council and as such may exercise the powers and duties assigned pursuant to subsection three, section five, article one-b of this chapter. The vice chancellor has all powers and duties assigned by law or by the commission and, in addition, has the following powers and duties:

1. To serve as the principal accountability point for the commission for implementation of the public policy agenda as it relates to community and technical colleges;

2. To serve on behalf of the commission as the liaison to the council and to the community and technical colleges;

3. To assume on behalf of the commission the principal responsibility for directing and assisting the work of the council; and

4. With the approval of the commission and the chancellor, to employ and direct staff as necessary and appropriate to carry out the duties and responsibilities of this article. On the first day of July, two thousand one, all personnel employed on the thirtieth day of June, two thousand one, within the joint commission for vocational-technical-occupational education are hereby transferred to the jurisdiction of the commission and are under the direct supervision of the vice chancellor and the chancellor: Provided, That prior to the first day of October, two thousand one, no employee shall be terminated or have his or her salary or benefit levels reduced as the sole result of the governance reorganization set forth in this article.

§18B-2B-8. State advisory committee of community and technical college presidents and provosts.

(a) Effective the first day of July, two thousand one, there is hereby created the state advisory committee of community and technical college presidents and provosts. For the purposes
of this section, the state advisory committee of community and
technical college presidents and provosts shall be referred to as
the “advisory committee”.

(b) Each president or other administrative head of a public
community and technical college, as defined in section four,
article three-c of this chapter shall be a member of the advisory
committee. An administrative head of a component, branch,
center, regional center or other delivery site with a community
and technical college mission may be a member if considered
appropriate.

(c) The vice chancellor serves as chair of the advisory
committee and shall convene the initial meeting during the
month of July, two thousand one. Thereafter, the advisory
committee shall meet at least once each quarter.

(d) The advisory committee shall communicate to the
council, through the vice chancellor, on matters of importance
to the group and shall meet annually between the months of
October and December with the council to discuss those matters
relating to community and technical college education in which
advisory committee members or the council may have an
interest.

(e) The vice chancellor shall prepare meeting minutes
which shall be made available, upon request, to the public.

ARTICLE 2C. WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-2C-1. Legislative findings; intent.
§18B-2C-2. Definitions.
§18B-2C-3. Authority and duty of commission to determine progress of community
and technical colleges; conditions; authority to create West Virginia
community and technical college.
§18B-2C-4. Authority of commission in creating West Virginia community and
technical college.
§18B-2C-1. Legislative findings; intent.

(a) Legislative findings. —

(1) The Legislature hereby finds that for more than a decade legislation has been enacted having as a principal goal creation of a strong, effective system of community and technical education capable of meeting the needs of the citizens of the state. In furtherance of that goal, the Legislature has passed the following major pieces of legislation:

(A) Senate Bill 420, passed during the regular session of one thousand nine hundred eighty-nine, reorganized the governance structure of public higher education and created the joint commission for vocational-technical-occupational education to bridge the gap between secondary and post-secondary vocational, technical, and occupational education;

(B) Senate Bill 377, passed during the regular session of one thousand nine hundred ninety-three, adopted goals and objectives for public post-secondary education, addressed the needs of nontraditional students, directed the institutions to include an assessment of work force development needs in their master plans and established the resource allocation model and policies to aid governing boards and institutions in meeting the established goals and objectives;

(C) Senate Bill 547, passed during the regular session of one thousand nine hundred ninety-five, established goals and funding for faculty and staff salaries, required the governing...
boards to establish community and technical education with the administrative, programmatic and budgetary control necessary to respond to local needs and provided that community and technical college budgets be appropriated to a separate control account;

(D) Senate Bill 653, passed during the regular session of two thousand, established the commission to develop a public policy agenda for higher education in conjunction with state leaders, set forth the essential conditions that must be met by each community and technical college in the state, and mandated that most component community and technical colleges move to independent accreditation.

(2) The Market Street Report, the McClenney Report, and the Implementation Board Report, cited in article two-b of this chapter, each reflects recent research and indicates that, while these legislative actions cited above have helped the state to make progress in certain areas of higher education, they have not offered a complete solution to the problems of community and technical colleges.

(b) Intent. — It is the intent of the Legislature:

(1) That this article and article two-b of this chapter be seen as additional steps in the process of developing strong institutions capable of delivering community and technical education to meet the needs of the state and that they be viewed as building blocks added to the foundation laid by earlier legislation.

(2) To create a mechanism whereby the commission, if necessary, can assure through its own direct action that the goals established pursuant to section one-a, article one of this chapter are met.
(3) To authorize the commission to create the West Virginia community and technical college to serve the interests of the people of West Virginia by advancing the public policy agenda developed pursuant to article one-b of this chapter. Specifically, the focus of the college and its governing board is:

(A) To encourage development of a statewide mission that:

(i) Raises education attainment;

(ii) Increases adult literacy;

(iii) Promotes work force and economic development; and

(iv) Ensures access to post-secondary education for the citizens of the state;

(B) To provide oversight or governance of the community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission;

(C) To provide leadership, support and coordination; and

(D) To protect and expand the local autonomy and flexibility necessary for community and technical colleges to succeed.

§18B-2C-2. Definitions.

The following words when used in this article and article two-b of this chapter have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) "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.

(b) "Governing board" means the West Virginia council for community and technical college education when acting as the governing board for the West Virginia community and technical college created pursuant to the provisions of this article.

(c) "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.

(d) "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.

(e) "Vice chancellor" means the vice chancellor for community and technical college education and work force development pursuant to section five, article one-b of this chapter.

(f) "West Virginia council for community and technical college education" or "council" means the council established pursuant to section three, article two-b of this chapter.

(g) "West Virginia community and technical college" or "college" means the statewide, accredited entity created pursuant to the provisions of this article.

§18B-2C-3. Authority and duty of commission to determine progress of community and technical colleges; conditions; authority to create West Virginia community and technical college.
(a) Beginning on the first day of July, two thousand one, and at least annually thereafter, the commission shall review and analyze all the public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission to determine their progress toward meeting the goals and objectives set forth in section one-a, article one of this chapter and toward advancing the purposes, goals and objectives set forth in article three-c of this chapter.

(b) The analysis required in subsection (a) of this section shall be based, in whole or in part, upon the findings made pursuant to the rule establishing benchmarks and indicators required to be promulgated by the commission in section two, article one-a of this chapter.

(c) Based upon their analysis in subsections (a) and (b) of this section, the commission shall make a determination whether any one or more of the following conditions exist:

(1) One or more of the component community and technical colleges required to do so has not achieved, or is not making sufficient, satisfactory progress toward achieving the essential conditions, including independent accreditation;

(2) One or more of the public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission requires financial assistance or other support to meet the goals and essential conditions set forth in this chapter;

(3) It is in the best interests of the people of the state or a region within the state to have a single, accredited institution which can provide an umbrella of statewide accreditation;

(4) It is in the best interests of the people of the state or a region of the state to have one accredited institution able to
extend accreditation to institutions and entities required to seek independent accreditation;

(5) One or more of the public community and technical colleges, branches, centers, regional centers, or other delivery sites with a community and technical college mission request from the commission the type of assistance which can best be delivered through implementation of the provisions of section four of this article. Institutional requests that may be considered by the commission include, but are not limited to, assistance in seeking and/or attaining independent accreditation, in meeting the goals for post-secondary education established in section one-a, article one of this chapter, in meeting the essential conditions set forth in section three, article three-c of this chapter, or in establishing and implementing regional networks.

(6) One or more public community and technical colleges, branches, centers, regional centers, or other delivery sites with a community and technical college mission, has not met, or is not making sufficient, satisfactory progress toward meeting, the goals set forth in section one-a, article one of this chapter; and

(7) The council makes a recommendation to the commission that it is in the best interests of the people of the state or a region of the state to create a statewide, independently accredited community and technical college.

(d) The commission may not make a determination subject to the provisions of subsection (c) of this section that a condition does not exist based upon a finding that the higher education entity lacks sufficient funds to make sufficient, satisfactory progress.

(e) The commission shall prepare a written report on the findings and determinations required by this section for the legislative oversight commission on education accountability by the first day of December, two thousand one, and each year
thereafter, together with a detailed history of any actions taken by the commission under the authority of this article.

§18B-2C-4. Authority of commission in creating West Virginia community and technical college.

(a) Subject to the provisions of subsection (c), section three of this article, if the commission makes a determination that one or more of the conditions exist, then the commission is authorized to create the West Virginia community and technical college.

(b) As soon as practicable after the commission determines that the college should be created, the commission shall notify the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability of the proposed actions: Provided, That the commission shall conduct a study regarding the procedures, findings and determinations considered necessary prior to any creation of the college and shall report its findings to the legislative oversight commission on education accountability no later than the first day of December, two thousand one: Provided, however, That the commission may not create the college prior to the report being received by the legislative oversight commission on education accountability.

(c) The commission shall certify to the legislative oversight commission on education accountability, on or before the first day of December of the year in which the college is created, proposed legislation to accomplish the purposes of this article for those matters requiring statutory change.

§18B-2C-5. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the governing board of West Virginia community and technical college.
If the commission determines that any of the conditions provided for in section three of this article have been met, then as to those entities to whom the conditions apply, the commission may:

(1) Designate the governing boards that shall become institutional boards of advisors and transfer governing authority of that board to the governing board of the college;

(2) Transfer as appropriate, consistent with state law, all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other matters which should be transferred or vested in the governing board;

(3) Assign powers and duties to the governing board and the college as may be necessary or expedient to accomplish the purposes of this article;

(4) Create the office of president of the college; and

(5) Take such other action as necessary or expedient to accomplish the purposes of this chapter.

§18B-2C-6. Powers and duties of governing board for the West Virginia community and technical college.

(a) The council created pursuant to article two-b of this chapter is the governing board for the West Virginia community and technical college.

(b) The powers and duties of the governing board are as follows:

(1) To assist the public community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission in any way practica-
ble to meet the goals and objectives set forth in section one-a, article one of this chapter;

(2) To assist in meeting any other goals or objectives adopted by the commission as part of its public policy agenda;

(3) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(4) To exercise all the powers and duties ascribed to governing boards in section four, article two-a of this chapter; and

(5) To meet annually between the months of October and December with the advisory committee of community and technical college presidents and provosts created pursuant to section eight, article two-b of this chapter to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest.

(c) The governing board has the following powers and duties as to all institutions:

(1) To coordinate public community and technical colleges, branches, centers, regional centers, and other delivery sites with a community and technical college mission including, but not limited to, those that are free-standing or administratively-linked to a sponsoring institution.

(2) To negotiate arrangements with individual entities who may elect to become units of the college for academic and accreditation purposes while retaining certain administrative links to a sponsoring institution;
(3) To develop the college as a statewide, accredited institution through which multiple, affiliated entities and sites may achieve accreditation;

(4) To provide directly to community and technical colleges, branches, centers, regional centers and other delivery sites with a community and technical college mission, certain support services including, but not limited to, student information systems, registration, financial and accounting systems and employee recordkeeping; and

(5) To exercise all the powers and duties assigned to the council pursuant to the provisions of article two-b of this chapter or by the commission.

(d) Subject to the supervision of the commission, the governing board has the following powers and duties as to any entity meeting the conditions of transfer pursuant to section four of this article:

(1) To govern and have direct academic and administrative responsibility for any public community and technical college, branch, center, regional center, or other delivery site with a community and technical college mission.

(2) To require the entities to seek independent accreditation through the college.

(3) To allocate state budgetary resources to the entity; and

(4) With the advice and consent of the commission, to appoint the administrative heads of institutions governed by the governing board.

§18B-2C-7. Powers and duties of vice chancellor as president of the West Virginia community and technical college.
1 The vice chancellor serves as the acting president of the college until such time as a president is selected as prescribed by law. As acting president, the vice chancellor has all the powers and duties assigned by law, by the commission or by the governing board. In addition, the vice chancellor shall continue to exercise all other powers and duties assigned by law or by the commission.

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-7. District consortia committees.
§18B-3C-8. Process for achieving independently-accredited community and technical colleges.

§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 work force 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 work force 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 work force 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 work force 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 work force 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.

(b) The district consortium committee shall cooperate with the regional work force investment board in the responsibility area of its institution and shall participate in any development or amendment to the regional work force investment plan.
§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: Provided, That Potomac state college of West Virginia university shall serve as a comprehensive two-year institution for the delivery of transfer education, may offer career programs in the area of agriculture, and may offer nontraditional outreach and work force development programs as a collaborative effort in a region with the local community and technical college whose mission and charge encompasses outreach and work force development programs.

(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 approved by the council and 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 satisfaction of the council and the commission that it is making progress toward accomplishing the benchmarks established in
its institutional compact for developing an independently accredited community and technical college; and

(3) That it has submitted an expenditure schedule approved by the council and the commission which sets forth a proposed plan of expenditures 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) 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 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.

(2) Center for higher education and work force 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 work force 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 assessment 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 work force 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
98 for higher education and work force development at Beckley
99 also shall provide the facilities and support services for other
100 public and private institutions delivering courses, programs and
101 services in Beckley. The objective would be to assure students
102 and employers in the area that there would be coordination and
103 efficient use of resources among the separate programs and
104 facilities, existing and planned, in the Beckley area. If, at a
105 future time, the commission believes it appropriate, it may
106 recommend to the Legislature that the Beckley institution be
107 created as a freestanding institution.

108 (3) Glenville state community and technical college. —
109 Glenville state community and technical college, including the
110 centers in Nicholas, Lewis and Roane counties, should retain its
111 relationship as a component of Glenville state college. The
112 president of Glenville state college and the governing board are
113 accountable to the commission for ensuring that the full range
114 of community and technical college services is available
115 throughout the region and that the community and technical
116 college adheres as nearly as possible to the essential conditions
117 pursuant to section three of this article, with the possible
118 exception of independent accreditation.

119 (4) Fairmont state community and technical college. —
120 Fairmont state community and technical college shall be an
121 independently accredited community and technical college
122 serving Marion, Doddridge, Barbour, Harrison, Monongalia,
123 Preston, Randolph and Taylor counties. The community and
124 technical college is developed on the base of the existing
125 component community and technical college of Fairmont state
126 college. Subject to the provisions of this section, the president
127 and the governing board of Fairmont state college are responsi-
128 ble, according to a plan approved by the commission, for
129 step-by-step implementation of the independently accredited
130 community and technical college which adheres to the essential
131 conditions pursuant to section three of this article. Subject to
the provisions of section twelve 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.

(5) Marshall university community and technical college.
— Senate Bill 653 created an implementation board charged
with the responsibility to 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. Pursuant to the
recommendation of the implementation board and of the
commission, Marshall university community and technical
college shall become an independently accredited community
and technical college. It should serve Cabell, Kanawha, Mason,
Putnam and Wayne counties. The new community and technical
college is developed on the base of the existing component
community and technical college of Marshall university.
Subject to the provisions of this section, the president and the
governing board of Marshall university are responsible,
according to a plan approved by the commission, for
step-by-step implementation of the new independently accred-
ited community and technical college which adheres to the
essential conditions pursuant to section three of this article.
Subject to the provisions of section twelve of this article, the
community and technical college will remain administratively
linked to Marshall university. Nothing herein shall be construed
to require Marshall university 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. — Shep-
herd community and technical college shall become an inde-
pendently 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 this section, 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 twelve 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.

(7) West Virginia state community and technical college. —
Senate Bill 653 created an implementation board charged with
the responsibility to 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. Pursuant to the
recommendation of the implementation board and of the
commission, West Virginia state community and technical
college shall become an independently accredited community
and technical college. It should serve Kanawha, Putnam and
Clay counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia state college. Subject to the provisions of this section, the president and the governing board of West Virginia state 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 twelve of this article, the community and technical college will remain administratively linked to West Virginia state college. Nothing herein shall be construed to require West Virginia 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.

(8) West Virginia university institute of technology. — Senate Bill 653 created an implementation board charged with the responsibility to 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. Pursuant to the recommendation of the implementation board and of the commission, West Virginia university institute of technology community and technical college shall become an independently accredited community and technical college. It should serve Fayette, Clay, Kanawha, Raleigh and Nicholas counties. The new community and technical college is developed on the base of the existing component community and technical college of West Virginia university institute of technology. Subject to the provisions of this section, the president and the
governing board of West Virginia university institute of technology 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 twelve of this article, the community and technical college will remain administratively linked to West Virginia university institute of technology. Nothing herein shall be construed to require West Virginia university 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 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§ 18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.

§ 18B-5-8. Report card on West Virginia business.

§ 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 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 com-
modity 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, requisici-
ton 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
twenty-five thousand dollars, to purchase by means of sealed
bids and competitive bidding or to effect advantageous pur-
chases through other accepted governmental methods and
practices: Provided, 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 institution 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 purchasing; and

(9) Shall provide that competitive bids are not required for purchases of five 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.

(f) 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 conditioned 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.

(g) All purchases and acquisitions shall be made in consideration 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.
(h) 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.

(i) 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 fifty 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.
(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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 commission, as appropriate, shall be responsible for paying the cost of the audit from funds appropriated to the governing boards or the commission.

(o) 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".

(p) 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.

(q) After the commission has granted approval for lease-purchase arrangements by the governing boards, a governing board may enter into lease-purchase arrangements for capital improvements, including equipment. Any lease-purchase arrangement so entered shall constitute a special obligation of the state of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the institution and must be cancelable at the option of the governing board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, shall never constitute an indebtedness of the state of West
Virginia or any department, agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and shall not be a charge against the general credit or taxing powers of the state or any political subdivision thereof; and such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the attorney general of West Virginia. Proposals for any arrangement must be requested in accordance with the requirements of this section and any rules or guidelines of the commission. In addition, any lease-purchase agreement must be approved by the attorney general of West Virginia. The interest component of any lease-purchase obligation shall be exempt from all taxation of the state of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the internal revenue code of one thousand nine hundred eighty-six, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also shall be exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

§18B-5-8. Report card on West Virginia business.

The policy commission shall make an annual report to the finance committees of the House of Delegates and the Senate regarding the entities with which each of the governing boards contracted in the previous year. This report shall be submitted on or before the fifteenth day of January of each year and shall be cumulative in nature. The report shall include, but not be limited to, information regarding the number of out-of-state entities with which each governing board contracted; the number of in-state firms with which each governing board contracted; the dollar amount of each contract; the equipment,
11 commodity or service for which each contract was let; and the
12 policy commission’s recommendations, if any, on the manner
13 in which the purchasing procedures could be improved.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§ 18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

§ 18B-6-2a. State advisory council of faculty.

§ 18B-6-4a. State advisory councils of classified employees.

§ 18B-6-1. Institutional boards of advisors for regional campuses and administratively linked community and technical colleges.

1 (a) Effective the first day of July, two thousand, there is
2 established at each regional campus and administratively-linked
3 community and technical college, excluding centers and
4 branches thereof, an institutional board of advisors: Provided,
5 That the institutional board of advisors shall not be appointed
6 for administratively linked community and technical colleges
7 until provided for in their compact.

8 (1) For the transition year beginning on the first day of July,
9 two thousand, through the thirtieth day of June, two thousand
10 one, only, the lay members of the institutional board of advisors
11 established for each of the regional campuses of West Virginia
12 university are appointed by the president of the respective
13 institution. Effective the first day of July, two thousand one, the
14 lay members of the institutional boards of advisors for the
15 regional campuses are appointed by the board of governors.

16 (2) The lay members of the institutional board of advisors
17 established for the administratively linked community and
18 technical colleges are appointed by the West Virginia council
19 for community and technical college education.
(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 from the institutional classified employees duly elected by the classified employees; 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 member from the faculty and the classified employees 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 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 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, president 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 submission 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 assis-
tance 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, appren-
ticeships and cooperative programs; to communicate better and
serve the current work force and work force 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 reimburse-
ment 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 addi-
tional 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 institu-
tional 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-6-2a. 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 council. 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.

(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 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 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 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 faculty member 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 state advisory council. 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 and members of the council shall be eligible to succeed themselves. For the purposes of this section the term “institution of higher education” includes the facilities and staff supervised by the vice chancellor for administration employed by the commission and the West Virginia network for educational telecomputing.

(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 any classified employee of a state institution of higher education represented on the council.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

(a) The president or other administrative head of each state institution of higher education shall give written notice to probationary faculty members concerning their retention or nonretention for the ensuing academic year: (1) Not later than the first day of March for those probationary faculty members who are in their first academic year of service; (2) not later than the fifteenth day of December for those probationary faculty members who are in their second academic year of service; and (3) at least one year before the expiration of an appointment for those probationary faculty members who have been employed two or more years with the institution. Such notice to those
probationary faculty members not being retained shall be by certified mail, return receipt requested.

(b) Upon request of the probationary faculty member not retained, the president or other administrative head of the institution shall within ten days, and by certified mail, inform the probationary faculty member of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision shall utilize the grievance procedure established in article six-a, chapter twenty-nine of this code. If it is concluded that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year.

(c) The term "probationary faculty member" shall be defined according to rules promulgated by the governing boards. The rights herein provided to probationary faculty members are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-1. Legislative purpose.
§18B-9-3. Higher education classified employee annual salary schedule.
§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.
§18B-9-5. Classified employee salary.
§18B-9-7. Conferences regarding personnel classification.
§18B-9-8. Hirings after effective date.

§18B-9-1. Legislative purpose.

The purpose of the Legislature in the enactment of this article is to require the commission to establish, control, supervise and manage a complete, uniform system of personnel classification in accordance with the provisions of this article
for all employees other than faculty and nonclassified employees at state institutions of higher education.


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, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by this article or by the commission;

(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 or the commission 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 or the commission;

(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 governing boards or the commission;

(f) "Pay grade" means the number assigned by the commission 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 commission 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, employment for nine months or more equals 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. In accordance with rules established by the commission, a classified employee may be granted additional years of experi-
ence 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.

§18B-9-3. Higher education classified employee annual salary schedule.

(a) There is hereby established a state annual salary schedule for classified employees consisting of a minimum annual salary for each pay grade in accordance with years of experience: Provided, That payment of the minimum salary shall be subject to the availability of funds, and nothing in this article shall be construed to guarantee payment to any classified employee of the salary indicated on the schedule at the actual years of experience absent specific legislative appropriation therefor. The minimum salary herein indicated shall be prorated for classified employees working less than thirty-seven and one-half hours per week. Despite any differences in salaries that may occur, a classified employee is equitably compensated in relation to other classified employees in the same pay grade if the following conditions exist:

(1) His or her annual salary is at least the minimum salary that was required for his or her pay grade and years of service on the first day of July two thousand, on the salary schedule included in this section immediately prior to the effective date of this act; and

(2) Progress is being made by the institution in meeting the salary goals set out in this article.

(b) The commission shall report to the legislative oversight commission on education accountability on the first day of December, two thousand one, and each year thereafter on the progress of the governing boards toward funding the classified employees’ salary schedule established pursuant to section
three, article nine of this chapter. The report shall include, but not be limited to, a detailed comparison of funding on individual campuses and specifically shall compare the status of funding for exempt and nonexempt classified employees pursuant to subsection (c), section four of this article.

(c) The commission shall conduct a study and report to the legislative oversight commission on education accountability by the first day of December, two thousand one, on the feasibility of considering location differential costs as part of the compensation package for classified employees.

(d) Nothing in this section may be construed to require an appropriation by the Legislature in excess of the legislative funding priorities as set forth in this chapter.

### HIGHER EDUCATION CLASSIFIED EMPLOYEE

#### ANNUAL SALARY SCHEDULE

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§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

(a) The commission shall implement an equitable system of job classifications, with the advice and assistance of staff councils and other groups representing classified employees, each classification to consist of related job titles and corresponding job descriptions for each position within a classi-
tion, together with the designation of an appropriate pay grade for each job title, which system shall be the same for corresponding positions of the commission and in institutions under all governing boards. The equitable system of job classification and the rules establishing it which were in effect immediately prior to the effective date of this section are hereby transferred to the jurisdiction and authority of the commission and shall remain in effect unless modified or rescinded by the commission.

(b) Any classified staff salary increases distributed within state institutions of higher education on the first day of July, two thousand one, shall be in accordance with the uniform employee classification system and a salary policy adopted by the interim governing board and approved by the commission. Any classified salary increases distributed within a state institution of higher education after the first day of July, two thousand one, shall be in accordance with the uniform classification system and a uniform and equitable salary policy adopted by each individual board of governors. Each salary policy shall detail the salary goals of the institution and the process whereby the institution will achieve or progress toward achievement of placing each classified employee at his or her minimum salary on the schedule established pursuant to section three of this article.

(c) No classified employee defined as nonexempt from the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended, may be paid an annual salary in excess of the salary established by the salary schedule for his or her paygrade and years of experience. Classified employees defined as exempt from the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended, may receive a salary in excess of the salary established by the salary schedule for his or her paygrade and years of experience but only if all such exempt employees at the institution are receiving at least the
minimum salary for their pay grade and years of experience as established for them by the salary schedule: Provided, That no exempt classified employee may receive a salary in excess of the highest salary provided for his or her paygrade in the salary schedule.

§18B-9-5. Classified employee salary.

(a) Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-eight, and each fiscal year thereafter, each classified employee with three or more years of experience shall receive an annual salary increase equal to fifty dollars times the employee's years of experience: Provided, That the annual salary increase may not exceed the amount granted for the maximum of twenty years of experience. These incremental increases are in lieu of any salary increase received pursuant to section two, article five, chapter five of this code; are in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in like manner as the annual payment to eligible state employees of the incremental salary increases based on years of service under the provisions of section two, article five, chapter five of this code.

(b) Any classified employee may receive merit increases and salary adjustments in accordance with policies established by the board of governors: Provided, That merit raises may be granted only pursuant to a rule adopted by the board of governors, and approved by the chancellor, which provides a fair and equitable basis for granting merit raises pursuant to regular evaluations based upon reasonable performance standards.

(c) The current annual salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and
nothing in this article may be construed to prohibit promotion
of any classified employee to a job title carrying a higher pay
grade if the promotion is in accordance with the provisions of
this article and the personnel classification system established
by the appropriate governing board.

§18B-9-7. Conferences regarding personnel classification.

The president of the institution or the designees charged
with responsibility to develop any personnel recommendations
for inclusion in the institution's annual report to its governing
board shall meet and confer during development of the recom-
mendations with any classified employee who: (1) May be
affected by proposed recommendations to its governing board;
or (2) has requested a change in job title.

§18B-9-8. Hirings after effective date.

Any individual hired as a full-time classified employee
after the effective date of this section shall be assigned to a
placement on the salary schedule which is appropriate to such
individual's classification, job title, pay grade and years of
experience: Provided, That nothing in this section shall be
construed to guarantee to a newly hired classified employee
payment of the salary prescribed in section three of this article.
(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 only to 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.

(b) 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, That the commission shall set tuition and fee goals for residents at each institution after examining tuition and fees at the institutions' peers: Provided, however, 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 as determined in accordance with commission policy: 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.
(c) 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.

(d) 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.

(e) The boards shall establish the rates to be charged full-time students enrolled during a regular academic term.

(1) 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.
(2) 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.

(3) 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.

(f) 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 the finances of any student were affected adversely 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 on a case-by-case basis if the finances of a student were affected adversely.
(g) 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.

(h) 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.

(i) 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.
(j) Effective the first day of July, two thousand one, tuition and fees rates shall be determined in accordance with subsections (k), (l) and (m) of this section.

(k) 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.
(m) Tuition and fee increases of the governing boards are subject to rules adopted by the commission pursuant to subsection (a), section four, article one-b of this chapter.

§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 governing boards, there is hereby imposed and the governing boards are 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.

(1) For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The governing boards have authority to increase such additional registration fee at institutions of higher education under its jurisdiction for students who are nonresidents of this state.

(2) For all part-time students and for all summer school students, the governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

(b) 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.

(c) There is created in the state treasury a special capital improvements fund for each state institution of higher education and the commission 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 and governing boards 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.

(d) The governing boards 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 education 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 education facilities.

(e) The governing boards, in their discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or the commission, upon request of institutions or governing boards, singly or jointly, 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 or governing boards 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 governing board or boards and 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.

(f) Such revenue bonds may be authorized and issued from time to time by the commission or governing boards 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.

(g) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and 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 governing board receiving the proceeds and
the commission. Such revenue bonds shall be signed by the
governor and by the chancellor of the commission or the chair
of the governing boards 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 or the chair of the appropri-
ate governing boards. Such revenue bonds shall be sold in such
manner as the commission or governing board determines is for
the best interests of the state.

(h) The commission or governing boards 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 or governing boards 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 or governing boards in the best interests of the
state and to enhance the marketability of such revenue bonds.

(i) 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 resolu-
tion, 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.

(j) Additional revenue bonds may be issued by the commission or governing boards 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 beginning on the seventeenth day of June, two thousand, additional sources of revenue and funds to effect such funding for capital improvement.

(k) 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.

(l) Any revenue bonds proposed to be issued under this section or article twelve-b, chapter eighteen of this code must be first approved by the commission.

(m) Revenue bonds issued pursuant to article twelve-b, chapter eighteen of this code may be issued by the commission or governing boards, either singly or jointly.

(n) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the
ARTICLE 11A. STATE AUTISM TRAINING CENTER.

§18B-11A-1. Purpose.
§18B-11A-4. Responsibilities of center.
§18B-11A-6. Advisory board.
§18B-11A-7. Trainee team; expense.

§18B-11A-1. Purpose.

1 The purpose of the Legislature in the enactment of this
2 article is to establish and develop an autism training center in
3 the state of West Virginia with a highly skilled, interdisciplin-
4 ary, appropriately experienced staff which will train teachers,
5 parents, guardians and others important to the autistic person’s
6 education and training. The center is established and operated
7 by the Marshall university board of governors or its designees.


1 For the purposes of this article:

2 (a) “Board” means the Marshall university board of
3 governors;

4 (b) “Center” means the autism training center;

5 (c) “Client” means a person with the primary diagnosis of
6 autism or autistic-like behavior; and
“Expenses” means those reasonable and customary expenditures related to training and treatment of eligible clients as defined in the rules and regulations promulgated by the center.


The board of governors is authorized to operate a state autism training center, including either the acquisition by purchase, lease, gift or otherwise, of necessary lands, and the construction of necessary buildings; the expansion, remodeling, altering or equipping of necessary buildings; and the making of contracts by the board of trustees with any state, county or municipal agency, or nonprofit institution, providing for the equipment, expenses, compensation of personnel, operation and maintenance of any facility of such agency or institution utilized for the purposes of this article. The board or its designees may make and enter into all contracts and agreements necessary and incidental to the performance of its powers and duties under this section, and may cooperate with other agencies of the state, county and federal governments.

§18B-11A-4. Responsibilities of center.

The center shall, through appropriate identification, evaluation, education, individual training and treatment programs for clients, offer appropriate education and training for professional personnel and family members or guardians.


The board, after consultation with the center, shall make and adopt rules, regulations and standards for the establishment, operation, cost reimbursement, fees for services, maintenance and government control of the center established pursuant to this article, including such rules, regulations and standards as
may be necessary for cooperation under and compliance with any existing or future federal statutes pertaining to grants-in-aid for client training or facilities and such other rules and regulations as may be necessary to effectuate the purposes of this article.

§18B-11A-6. Advisory board.

The board of governors shall appoint a board of West Virginia citizens to advise the center director on matters of policy. The advisory board shall be composed of fifty percent parents or guardians of clients eligible for the center’s program; forty percent persons from professional fields related to autism, such as special education, psychology, hearing and speech, neurology and pediatrics; and ten percent knowledgeable lay citizens such as legislators or other lay community leaders. The director of the center shall be an ex officio nonvoting member of the advisory board.

§18B-11A-7. Trainee team; expense.

The primary method of providing services through the center is by the use of trainee teams. A trainee team shall consist of an eligible client, a professional chosen by the primary local service agency and the client’s parent or parents or guardian.

The center may charge agencies such fees and reimburse trainee team or client expenses as provided by rules and regulations. The center may also provide for reasonable and customary expenses in excess of fees charged sending agencies for each trainee team or otherwise eligible client, including child care for other children of attending parents and others as specified in rules and regulations.

ARTICLE 14. MISCELLANEOUS.
§18B-14-5a. Authorization for sale lease back.

Notwithstanding any other provisions of this code to the contrary and upon approval of the commission before incurring any obligations, the governing boards are hereby authorized and empowered to sell any building which is on unencumbered real property to which the board holds title and lease back the same building and deposit the net proceeds of the transaction into a special revenue account in the state treasury to be appropriated by the Legislature for the use of the institution at which the real property is located: Provided, That prior to such action the appropriate governing board shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals: Provided, however, That prior to such action, the governing board shall retain independent financial and legal services to examine fully all aspects of the transaction. Such sale may only be made to a special purpose entity which exists primarily for the purpose of supporting the institution at which the building is located.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-4. Powers and duties of senior administrator.

Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the senior administrator is authorized and empowered to: (1) Prepare and supervise the issuance of public information concerning the grant program; (2) prescribe the form and regulate the submission of applications for grants; (3) administer or contract for the administration of such examinations as may be prescribed by the senior administrator; (4) select qualified recipients of grants; (5) award grants; (6) accept grants, gifts, bequests and devises of real and personal property for the purposes of the
grant program; (7) administer federal and state financial loan programs; (8) cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program; (9) make the final decision pertaining to residency of an applicant for grant or renewal of grant; (10) employ or engage such professional and administrative employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall serve at the will and pleasure and under the direction and control of the senior administrator; (11) employ or engage such clerical and other employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall be under the direction and control of the senior administrator; (12) prescribe the duties and fix the compensation of all such employees; and (13) administer the adult part-time student higher education grant program established under section seven of this article.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.


As used in this article:

(a) "Commission" means the legislative oversight commission on education accountability;

(b) "Board" means the higher education policy commission or the chancellor as defined in chapter eighteen-b of this code, or both, or any successor agency or officer. "Board" also means
any other entity directed by this code to promulgate a rule or rules in accordance with this article, but this definition shall apply solely for the purpose of promulgating the rule or rules required to be promulgated in accordance with this article.

§29A-3A-12. Submission of legislative rules to the legislative oversight commission on education accountability.

(a) When the board finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section ten of this article, the board shall submit to the legislative oversight commission on education accountability at its offices or at a regular meeting of such commission fifteen copies of the following:

1. The full text of the legislative rule as finally approved by the board, with new language underlined and with language to be deleted from any existing rule stricken-through but clearly legible;

2. A brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal;

3. A statement of the circumstances which require the rule;

4. A fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and

5. Any other information which the commission may request or which may be required by law.

(b) The commission shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:
(1) Whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the proposed rule was promulgated;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was promulgated in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the commission shall recommend that the Legislature:

(1) Authorize the board to promulgate the legislative rule;

or

(2) Authorize the board to promulgate part of the legislative rule; or
(3) Authorize the board to promulgate the legislative rule with certain amendments; or

(4) Recommend that the rule be withdrawn.

The commission shall file notice of its action in the state register and with the board proposing the rule: Provided, That when the commission makes the recommendations of subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the commission recommends that a rule be authorized, in whole or in part, by the Legislature, the commission shall instruct its staff or the office of legislative services to draft a bill authorizing the board to promulgate all or part of the legislative rule. If the commission recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.


Unless there is a provision in a legislative rule specifying that the provisions thereof shall not be severable, the provisions of every legislative rule, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so
dependent upon, the unconstitutional or void provision that the
court cannot presume the Legislature would have enacted the
remaining valid provisions without the unconstitutional or void
one, or unless the court finds the remaining valid provisions,
standing alone, are incomplete and are incapable of being
executed in accordance with the legislative intent: Provided,
That if any legislative rule has its own severability clause, then
that severability clause shall govern and control with respect to
that section, in lieu of the provisions of this section. The
provisions of this section shall be fully applicable to all future
amendments to legislative rules, with like effect as if the
provisions of this section were set forth in extenso and every
such amendment were reenacted as a part thereof, unless such
amendment to the legislative rule contains its own severability
clause.

CHAPTER 111

(H. B. 2527 — By Delegates Williams, Stempie, Carmichael,
Shaver, Perry, Swartzmiller and Harrison)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article thirty, chapter eighteen of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact section four, article ten,
chapter thirty-eight of said code, all relating to qualified state
tuition programs; creating the West Virginia college prepaid
tuition and savings program act to succeed the West Virginia
college prepaid tuition trust act; legislative findings and purpose;
defined terms; creating the West Virginia college prepaid tuition and savings program and board; board powers; continuing the prepaid tuition trust and fund; creating the savings plan trust and fund; renaming the prepaid tuition trust fund administrative account the college prepaid tuition and savings program administrative account and clarifying certain of its authorizations; reauthorizing the personal income tax modification; clarifying the reporting and audit requirements of the program; considerations for eligibility for state student financial aid; confidentiality requirements; authorization of rules; and adding savings plan fund payments to the list of property exempt from bankruptcy proceedings.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

38. Liens.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-1. Title.
§18-30-2. Legislative findings and purpose.
§18-30-3. Definitions.
§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.
§18-30-5. Powers of the board.
§18-30-6. West Virginia prepaid tuition trust.
§18-30-7. West Virginia savings plan trust.
§18-30-8. College prepaid tuition and savings program administrative account.
§18-30-10. Reports and account; annual audit.
§18-30-12. Confidentiality.

§18-30-1. Title.

This article is known and cited as the "West Virginia College Prepaid Tuition and Savings Program Act".

§18-30-2. Legislative findings and purpose.

The Legislature hereby finds and determines that enhancing the accessibility and affordability of higher education for all citizens of West Virginia will promote a well-educated and financially secure population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and families in planning for future educational expenses by making the tax incentives in 26 U.S.C. § 529 available to West Virginians are proper governmental functions and purposes of the state.

The Legislature also finds that continuation of the prepaid tuition plan and creation of a savings plan will further those governmental functions and purposes. It is, therefore, the legislative intent of this article to continue the prepaid tuition plan and to enhance the plan by authorizing the creation of a savings plan so that more students may attend eligible higher education institutions.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. § 529:
(a) "Account" means a prepaid tuition account or a savings plan account established in accordance with this article.

(b) "Account owner" means the individual, corporation, association, partnership, trust or other legal entity who enters into a prepaid tuition contract and is obligated to make payments in accordance with the prepaid tuition contract or who enters into a savings plan contract and invests money in a savings plan account.

(c) "Beneficiary" means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

(d) "Board" means the board of trustees of the college prepaid tuition and savings program as provided in section four of this article.

(e) "Distribution" means any disbursement from an account in accordance with 26 U.S.C. § 529.

(f) "Eligible educational institution" means an institution of higher education that qualifies under 26 U.S.C. § 529 as an eligible educational institution.

(g) "Prepaid tuition account" means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions in accordance with the prepaid tuition plan.
(h) "Prepaid tuition contract" means a contract entered into by the board and an account owner establishing a prepaid tuition account.

(i) "Prepaid tuition plan" means the plan that contractually guarantees payment of tuition at a West Virginia public eligible educational institution.

(j) "Program" means the West Virginia college prepaid tuition and savings program established under this article.

(k) "Qualified higher education expenses" mean higher education expenses permitted under 26 U.S.C. § 529 for enrollment or attendance of a beneficiary at an eligible educational institution.

(l) "Savings plan" means the plan that allows account distributions for qualified higher educational expenses.

(m) "Savings plan account" means an account established by an account owner pursuant to this article in order for the beneficiary to apply distributions toward qualified higher education expenses at eligible educational institutions.

(n) "Savings plan contract" means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

(o) "Treasurer" means the West Virginia state treasurer.

(p) "Tuition" means the quarter, semester or term undergraduate charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.
(a) The West Virginia college prepaid tuition and savings program is hereby created. The program consists of a prepaid tuition plan and a savings plan.

(b) The board of trustees of the prepaid tuition trust fund in existence immediately prior to the effective date of this section shall become the board of the college prepaid tuition and savings program and all powers, rights and responsibilities of the board of trustees of the prepaid tuition trust fund are transferred to the board of the college prepaid tuition and savings program. With the exception of the members of the board appointed pursuant to the provisions of subdivision (3) of subsection (c) of this section, the members of the board of trustees of the prepaid tuition trust fund shall become the members of the board of the college prepaid tuition and savings program on the effective date of this section and shall, for all purposes, serve the same terms that they would have served had the board of trustees of the prepaid tuition trust fund continued.

(c) The board consists of nine members and includes the following:

(1) The secretary of education and the arts, or his or her designee;

(2) The state treasurer, or his or her designee;

(3) Two representatives of the higher education policy commission, who may or may not be members of the higher education policy commission, appointed by the commission who serve as voting members of the board, one of whom shall represent the interests of the universities of West Virginia and one of whom shall represent the interests of the state colleges and community and technical colleges of West Virginia. The members appointed pursuant to the provisions of this subdivision shall assume the positions heretofore held by the representatives of the university system board of trustees and the state
college system board of directors in existence prior to July 1, 2000;

(4) Five other members, appointed by the governor, with knowledge, skill and experience in an academic, business or financial field, to be appointed as follows:

(A) A private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more nominees of the speaker of the House of Delegates;

(B) A private citizen not employed by, or an officer of, the state or any political subdivision of the state appointed from one or more nominees of the president of the Senate;

(C) One member representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia association of private colleges; and

(D) Two members representing the public.

(d) The public members and the member representing the interests of private institutions of higher education are appointed by the governor with the advice and consent of the Senate.

(e) Only state residents are eligible for appointment to the board.

(f) Members appointed by the governor serve a term of five years and are eligible for reappointment at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term. Of the initial appointments to the board of trustees of the prepaid tuition trust fund in existence immediately prior to the effective date of this section, the governor shall appoint one member to a one-year term, one
63 member to a two-year term, one member to a three-year term, 
64 one member to a four-year term, and one member to a five-year 
65 term. Thereafter, all terms are five years.

66 (g) Members of the board serve without compensation. The 
67 treasurer may pay all expenses, including travel expenses, 
68 actually incurred by board members in the conduct of their 
69 official duties. Expense payments are made from the college 
70 prepaid tuition and savings program administrative account, and 
71 are made at the same rate paid to state employees.

72 (h) The treasurer may provide support staff and office 
73 space for the board.

74 (i) The treasurer is the chairman and presiding officer of 
75 the board, and may appoint the employees the board considers 
76 advisable or necessary. A majority of the members of the board 
77 constitute a quorum for the transaction of the business of the 
78 board.

§18-30-5. Powers of the board.

1 In addition to the powers granted by any other provision of 
2 this article, the board has the powers necessary or appropriate 
3 to carry out the provisions and objectives of this article, other 
4 methods of financing post-secondary education as relate to the 
5 program, and the powers delegated by any other law of the state 
6 or any executive order of the state. The board may also:

7 (a) Adopt and amend bylaws;

8 (b) Sue and be sued;

9 (c) Execute contracts and other instruments for necessary 
10 goods and services, employ necessary personnel and engage the 
11 services of private consultants, actuaries, auditors, counsel, 
12 managers, trustees, and any other contractor or professional
needed. Selection of these services is not subject to the provisions of article three, chapter five-a of this code;

(d) Operate a prepaid tuition plan in accordance with this article and 26 U.S.C. § 529;

(e) Operate a savings plan in accordance with this article and 26 U.S.C. § 529;

(f) Develop and impose any requirements, policies, procedures and guidelines to implement and manage the program;

(g) Impose reasonable requirements for residency for beneficiaries at the time of purchase of a prepaid tuition contract. However, nothing in this subdivision establishes residency requirements for matriculation at state eligible educational institutions;

(h) Assess, collect and expend administrative fees, charges and penalties;

(i) Authorize the assessment, collection and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia investment management board, or other professional managing or investing the trust funds and accounts;

(j) Invest and reinvest any of the funds and accounts under the board’s control with a financial institution, an investment manager, a fund manager, the West Virginia investment management board or other professional investing the funds and accounts. Investments made under this article shall be made in accordance with the provisions of article six-c, chapter forty-four of this code, the West Virginia uniform prudent investor act. No board member, nor any person, financial institution,
investment manager, fund manager or the West Virginia investment management board to whom the board delegates any of its investment authority who acts within the standard of care set forth in this section is personally liable for losses suffered by the program on investments made pursuant to this article;

(k) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans, aid, and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article. The board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within ninety days of receipt;

(l) Propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code;

(m) Make all necessary and appropriate arrangements with eligible educational institutions in order to fulfill its obligations under the prepaid tuition contracts and the savings plan contracts; and

(n) Establish a direct-support organization which is a West Virginia corporation, not for profit, organized and operated to receive, hold, invest and administer property and make expenditures to or for the benefit of the purposes of this article, if the board determines a need for the organization exists. The board may authorize the direct-support organization to use program facilities and property, except money. The board may invest funds of the direct-support organization.

§18-30-6. West Virginia prepaid tuition trust.
(a) The “Prepaid Tuition Trust Fund” is continued within the accounts held by the state treasurer for administration by the board.

(b) The prepaid tuition trust fund shall receive all payments from account owners on behalf of beneficiaries of prepaid tuition contracts or from any other source, public or private. Earnings derived from the investment of moneys in the prepaid tuition trust fund shall remain in the prepaid tuition trust fund held in trust in the same manner as payments, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the prepaid tuition plan.

(c) The corpus, assets and earnings of the prepaid tuition trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the prepaid tuition plan does not constitute a debt of the state, but is solely an obligation of the prepaid tuition trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the prepaid tuition plan. All amounts payable from the prepaid tuition trust fund are limited to amounts available in the prepaid tuition trust fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a prepaid tuition contract by the board, its employees and agents.

(f) The prepaid tuition plan and the prepaid tuition trust fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan
and after payment of all fees, charges, expenses and penalties, the assets of the prepaid tuition trust fund are paid to current account owners, to the extent possible, on a pro rata basis as their interests may appear, and any unclaimed assets in the program shall revert to the state in accordance with the uniform unclaimed property act in article eight, chapter thirty-six of this code.

(g) The board shall have the actuarial soundness of the prepaid tuition trust fund evaluated annually to ensure that sufficient funds are deposited in the prepaid tuition trust fund to meet obligations. If the board finds that additional contributions are needed to preserve the actuarial soundness of the prepaid tuition trust fund, it may adjust the terms of preexisting and subsequent prepaid tuition contracts to ensure the prepaid tuition trust fund's soundness: Provided, That any necessary adjustment to preexisting contracts are only assessed on future payments and not retroactively upon previous payments made by the account owners or donors to the prepaid tuition trust fund.

(h) The board shall build and maintain in the prepaid tuition trust fund an actuarial surplus, at a level recommended by the actuaries, to ensure appropriate funding for the trust fund.

(i) On or before the first day of December of each year, the chairman of the board shall submit to the governor the amount of any deficiency certified by an actuary as needed to meet the current obligations of the prepaid tuition trust fund for the next fiscal year. Notwithstanding any provision of this code to the contrary, the governor, after consultation with the budget section of the finance division of the department of administration, may request an appropriation to the board in the amount of the deficiency, to meet the current obligations of the prepaid tuition trust fund, in the budget presented to the next session of
the Legislature for its consideration. The Legislature is not
required to make any appropriation pursuant to this subsection,
and the amount of the deficiency is not a debt or a liability of
the state. As used in this section, "current obligations of the
prepaid tuition trust fund" means amounts required for the
payment of contract distributions or other obligations of the
prepaid tuition trust fund, the maintenance of the fund, and
operating expenses for the current fiscal year. Nothing in this
subsection creates an obligation of state general revenue funds
or requires any level of funding by the Legislature.

(j) To fulfill the charitable and public purposes of this
article, neither the earnings nor the corpus of the prepaid tuition
trust fund is subject to taxation by the state or any of its
political subdivisions.

(k) Notwithstanding any provision of this code to the
contrary, money in the prepaid tuition trust fund is exempt from
creditor process and not subject to attachment, garnishment or
other process; is not available as security or collateral for any
loan, or otherwise subject to alienation, sale, transfer, assign-
ment, pledge, encumbrance or charge; and is not subject to
seizure, taking, appropriation or application by any legal or
equitable process or operation of law to pay any debt or liability
of any account owner, beneficiary or successor in interest.

§18-30-7. West Virginia savings plan trust.

(a) The board may establish a savings plan trust, and may
establish a savings plan trust fund account, titled the "Savings
Plan Trust Fund", within the accounts held by the treasurer or
with a financial institution, an investment manager, a fund
manager, the West Virginia investment management board or
any other person for the purpose of managing and investing the
trust fund. Assets of the savings plan trust are held in trust for
account owners and beneficiaries.
(b) The savings plan trust fund shall receive all moneys from account owners on behalf of beneficiaries of savings plan contracts or from any other source, public or private. Earnings derived from the investment of the moneys in the college savings trust fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the savings plan.

(c) The corpus, assets and earnings of the savings plan trust fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the savings plan does not constitute a debt or obligation of the state, but is solely an obligation of the savings plan trust fund. The state has no obligation to any designated beneficiary or any other person as a result of the savings plan. All amounts payable from the savings plan trust fund are limited to amounts available in the fund.

(d) Nothing in this article or in any savings plan contract is a promise or guarantee that the distributions available for a beneficiary will cover the cost of qualified higher education expenses at an eligible educational institution, or as a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible higher education institution.

(e) The requirements of the provisions of chapter thirty-two of this code do not apply to the sale of a savings plan contract by the board, its employees and agents.

(f) The savings plan and any savings plan trust fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan, the balances of savings plan accounts, less any distributions,
refunds, fees, charges and penalties, are sent to account owners, to the extent possible, and any unclaimed assets in the program shall revert to the state in accordance with the uniform unclaimed property act in article eight, chapter thirty-six of this code.

(g) The state pledges to account owners and beneficiaries of the savings plans that the state will not limit or alter the rights under this article which are vested until the obligations are met and discharged. However, nothing in this subsection prohibits the Legislature from discontinuing or terminating a savings plan.

(h) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political subdivisions.

(i) Notwithstanding any provision of this code to the contrary, money in the savings plan trust fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge; and is not subject to seizure, taking, appropriation or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

§18-30-8. College prepaid tuition and savings program administrative account.

There is hereby created a separate account within the state treasurer’s office titled the “college prepaid tuition and savings program administrative account” for the purposes of implementing, operating and maintaining the trust funds and program created by this article. On the effective date of this section, all moneys in the prepaid tuition trust fund administrative account
are hereby transferred to the college prepaid tuition and savings program administrative account.

The administrative account shall receive all fees, charges and penalties collected by the board. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.


As provided in section twelve-a, article twenty-one, chapter eleven of this code, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to the provisions of this article, is eligible for a tax deduction.

§18-30-10. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Provide annually summary information on the financial condition of the prepaid tuition trust fund and statements on the savings plan accounts to the respective account owners;

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the trust funds and the administrative account, and provide a copy of the report to the joint committee on government and finance and the legislative oversight commission on education accountability; and

(3) Prepare, or have prepared, an annual actuarial report of the prepaid tuition trust fund and transmit a copy of the report to the governor, the president of the Senate, the speaker of the House of Delegates and the legislative oversight commission on education accountability.

(b) All accounts of the board, including the trust funds, are subject to an annual external audit by an accounting firm,
selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of section thirty-three, article two, chapter five-a of this code.


The calculations of a beneficiary’s eligibility for state student financial aid for higher education may not include or consider the value of distributions available in a prepaid tuition account or the value of distributions available in a savings plan account.

§18-30-12. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.


The legislative rules filed in the state register on the thirtieth day of September, one thousand nine hundred ninety-seven, modified by the board of trustees of the West Virginia prepaid tuition trust fund to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the thirtieth day of January, one thousand nine hundred ninety-eight, relating to the West Virginia prepaid tuition trust fund (rules for the West Virginia prepaid tuition trust fund), are authorized.
CHAPTER 38. LIENS.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

Pursuant to the provisions of 11 U.S.C. § 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. § 522(d).

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed fifteen thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor.

(b) The debtor's interest, not to exceed two thousand four hundred dollars in value, in one motor vehicle.

(c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: Provided, That the total amount of personal property exempted under this subsection may not exceed eight thousand dollars.

(d) The debtor's interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.
(e) The debtor's interest, not to exceed in value eight hundred dollars plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmeasured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value eight thousand dollars less any amount of property of the estate transferred in the manner specified in 11 U.S.C. § 542(d), in any accrued dividend or interest under, or loan value of, any unmeasured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor's right to receive:

1. A social security benefit, unemployment compensation or a local public assistance benefit;
2. A veterans' benefit;
3. A disability, illness or unemployment benefit;
4. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
5. A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness,
disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

(A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor’s rights under the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under section 4973 and/or section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether the tax is paid.

(k) The debtor’s right to receive, or property that is traceable to:

(1) An award under a crime victim’s reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual’s death, to the extent reasonably
83 necessary for the support of the debtor and any dependent of the
debtor;

85 (4) A payment, not to exceed fifteen thousand dollars on
account of personal bodily injury, not including pain and
suffering or compensation for actual pecuniary loss, of the
debtor or an individual of whom the debtor is a dependent;

89 (5) A payment in compensation of loss of future earnings
of the debtor or an individual of whom the debtor is or was a
dependent, to the extent reasonably necessary for the support of
the debtor and any dependent of the debtor;

93 (6) Payments made to the prepaid tuition trust fund or to the
savings plan trust fund, including earnings, in accordance with
article thirty, chapter eighteen of this code on behalf of any
beneficiary.

CHAPTER 112
(S. B. 439 — By Senator Mitchell)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter
eighteen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to ending, as discipline,
suspension from school as punishment for not attending class.

Be it enacted by the Legislature of West Virginia:
That section one, article five, 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 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.

(b) Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer or medical inspector of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher shall have authority to exclude from his or her classroom or school bus any pupil who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a
pupil; or who willfully disobeys a school employee; or who
uses abusive or profane language directed at a school employee.
Any pupil excluded shall be placed under the control of the
principal of the school or a designee. The excluded pupil may
be admitted to the classroom or school bus only when the
principal, or a designee, provides written certification to the
teacher that the pupil may be readmitted and specifies the
specific type of disciplinary action, if any, which was taken. If
the principal finds that disciplinary action is warranted, he or
she shall provide written and, if possible, telephonic notice of
such action to the parent(s), guardian(s) or custodian(s). When
a teacher excludes the same pupil from his or her classroom or
from a school bus three times in one school year, and after
exhausting all reasonable methods of classroom discipline
provided in the school discipline plan, the pupil may be
readmitted to the teacher’s classroom only after the principal,
teacher and, if possible, the parent(s), guardian(s) or custo-
dian(s) of the pupil have held a conference to discuss the
pupil’s disruptive behavior patterns, and the teacher and the
principal agree on a course of discipline for the pupil and
inform the parent(s), guardian(s) or custodian(s) of the course
of action. Thereafter, if the pupil’s disruptive behavior persists,
upon the teacher’s request, the principal may, to the extent
feasible, transfer the pupil to another setting.

(d) The Legislature finds that suspension from school is not
appropriate solely for a pupil’s failure to attend class. There-
fore, no pupil may be suspended from school solely for not
attending class. Other methods of discipline may be used for the
pupil which may include, but are not limited to, detention, extra
class time or alternative class settings.

(e) Corporal punishment of any pupil by a school employee
is prohibited.
(f) The West Virginia board of education and county boards of education shall adopt policies consistent with the provisions of this section encouraging the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program which may include the responsible student program and a student involvement program which may include the peer mediation program, devised by the West Virginia board of education. Each board may modify such programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards of education may also establish cooperatives with private entities to provide middle educational programs which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management and decisionmaking for students and any other program related to preventive discipline.

(g) For the purpose of this section: (1) "Pupil or student" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That, in the case of adults, the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; and (2) "teacher" shall mean all professional educators as defined in section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.
(h) Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen of this code.

CHAPTER 113

(H. B. 2898 — By Delegates Paxton, Shelton, Dempsey, Perry, Carmichael, Romine and Canterbury)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and four, article three-d, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including funds to assist with modernization and procurement of equipment for workforce training programs in grants through the workforce development initiative grant program; updating obsolete references; requiring prior approval for sale, disposal or change in use of equipment upgraded or procured with grant funds; authorizing annual renewal for less than five years; establishing additional required element in mission of community and technical colleges accepting grant funds; authorizing required private match to be both cash and in-kind; requiring plan to collaborate with public schools to maximize use of existing personnel and equipment; and authorizing award of funds for qualified programs operated on collaborative basis and utilized by both secondary and post-secondary students at public school facilities.

Be it enacted by the Legislature of West Virginia:
That sections one, three and four, article three-d, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.


§18B-3D-4. Grant application procedures.

§18B-3D-1. Legislative findings and intent.

(a) The Legislature finds that a recent statewide study of the workforce training needs of employers throughout the state provided a clear message from the business community:

(1) The needs of employers are rapidly changing and training providers must be more responsive or the state economy will suffer;

(2) Information specific to West Virginia, once again emphasizes the critical link between education and economic development that empowering youth and adults with the knowledge and skills they need to succeed in the competitive work world also results in a workforce which enables businesses and communities to prosper;

(3) Although employers are generally satisfied with the quality of the West Virginia workforce and the study provides additional support that the measures adopted in the Jobs Through Education Act will bring continued improvement, workforce needs are not static, critical skill shortages currently exist, and the establishment of a workforce development system that responds more quickly to the evolving skill requirements of employers is needed.

(b) The Legislature further finds that a study of community and technical education in West Virginia performed by the
national center for higher education management systems called
attention to problems in providing needed workforce education
and found that there is a need to:

(1) Jump-start development of community college and
postsecondary workforce development initiatives;

(2) Provide incentives for existing public postsecondary
providers to respond jointly to both short and long-term needs
of employers and other clients;

(3) Provide funding for explicit incentives for partnerships
between employers and public postsecondary institutions to
develop comprehensive community college and workforce
development services; and

(4) Allocate funds competitively on the basis of proposals
submitted by providers.

(c) It is further the intent of the Legislature that the granting
of funds under this article will promote the development of
comprehensive community and technical colleges as set forth
in article three-c of this chapter.

(d) It is the intent of the Legislature through the grant of
funds under this article to provide limited seed money to
address some of the specific areas where improvement is
needed, including:

(1) Improving employer awareness and access to services
available through the state’s education institutions;

(2) Providing designated professionals and resources to
support workforce education through the state’s education
institutions;
(3) Assisting with the modernization and procurement of equipment needed for workforce training programs: Provided, that any equipment purchased or upgraded with grant funds awarded under the provisions of this article may not be sold, disposed of or used for purposes other than those specified in the grant without prior approval of the council;

(4) Increasing the capacity of the state's education institutions to respond rapidly to employer needs for workforce education, and training on an on-going basis through the development of a client-focused, visible point of contact for program development and delivery, service referral and needs assessment, such as a workforce development center; and

(5) Maximizing the use of available resources for workforce education and training through partnerships with public vocational, technical and adult education centers and private training providers.

(e) It is further the intent of the Legislature that consideration and partnering opportunities be given to small businesses on an equal basis with larger businesses for the purposes of this article and that the seed money will assist providers in becoming self-sustaining through partnerships with business and industry which will include cost-sharing initiatives and fees charged for the use of services.

(f) The Legislature intends that grants of funds made under the provisions of this article will be competitive among applicants who meet all of the criteria established in this article and such other criteria as may be specified by the council. Subject to the availability of funds, more than one competition may be held during the same fiscal year and the dollar range of awards granted in successive competitions shall be prorated based on the number of months remaining in the fiscal year. Subject to annual review and justification, it is the intent of the Legislature to renew grant awards made under this article each

(a) The statewide mission of the workforce development initiative program is to develop a strategy to strengthen the quality of the state’s workforce by linking the existing postsecondary education capacity to the needs of business, industry and other employers. Available funding will be used to provide explicit incentives for partnerships between employers and community and technical colleges to develop comprehensive workforce development services. Funds will be granted on the basis of proposals developed according to criteria established by the council.

(b) The mission of any community and technical college accepting a workforce development initiative grant is to:

(1) Become client-focused and develop programs that meet documented employer needs;

(2) Involve and collaborate with employers in the development of programs;

(3) Develop customized training programs that provide for the changing needs of employers and that are offered at flexible times and locations to accommodate employer scheduling;

(4) Develop partnerships with other public and private providers, including small business development centers and, vocational, technical and adult education centers, and with business and labor, to fulfill the workforce development needs of the service area;
(5) Establish cooperative arrangements with the public school system for the seamless progression of students through programs of study that begin at the secondary level and conclude at the community and technical college level, particularly with respect to career and technical education certificates, 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.

(6) Assist in the on-going assessment of the workforce development needs of the service area; and

(7) Serve as a visible point of contact and referral for services to meet the workforce development needs of the service area.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the workforce development initiative grant program, a community and technical college must meet the following conditions:

(1) Establish a consortia committee as required by section seven, article three-c of this chapter. The consortia committee or a subcommittee thereof shall participate in the development of and approve applications for funding grants under the provisions of this article, and shall approve the workforce development initiative budget;

(2) Develop a plan to achieve measurable improvements in the quality of the workforce within its service area over a five-year period. The plan must be developed in partnership with employers, local vocational schools, and other workforce education providers;

(3) Establish a special revolving fund under the jurisdiction of the consortia committee dedicated solely to workforce development initiatives for the purposes provided in this article.
18 Any fees or revenues generated from workforce development
19 initiatives funded by a competitive grant shall be deposited into
20 this fund.

21 (b) To be eligible to receive a workforce development
22 initiative grant, a community and technical college must
23 provide at least the following information in its application:

24 (1) Identification of the specific business or business sector
25 training needs that will be met if a workforce development
26 initiative grant is received;

27 (2) A commitment from the private sector to provide a
28 match of one dollar, cash and in-kind, for each dollar of state
29 grant money received except in cases where the community and
30 technical college can demonstrate in the grant application that
31 it would be a hardship for the business being served to provide
32 such a match. In those cases only, the match required may be
33 reduced to one private dollar, cash and in-kind, for every three
34 dollars of state grant money provided. In the case of awards for
35 the modernization of procurement of equipment, the council
36 may establish a separate match requirement of up to one dollar,
37 cash and in-kind, for each dollar of state grant money received;

38 (3) An agreement to share with other community and
39 technical colleges any curricula developed using funds from a
40 workforce development initiative grant;

41 (4) A specific plan showing how the community and
42 technical college will collaborate with local postsecondary
43 vocational institutions to maximize the use of existing facilities,
44 personnel and equipment;

45 (5) An acknowledgment that acceptance of a grant under
46 the provisions of this article commits the community and
47 technical college and its consortia committee to such terms,
48 conditions and deliverables as is specified by the council in the
request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

(c) Applications submitted by community and technical colleges may be awarded funds for programs which meet the requirements of this article that are operated on a collaborative basis at facilities under the jurisdiction of the public schools and utilized by both secondary and post-secondary students.

CHAPTER 114

(H. B. 3245 — By Delegates Mezzatesta, Williams, Stemple, Fahey, Swartzmiller, Harrison and Carmichael)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.


(a) Findings — The Legislature finds that:

1. West Virginia has long been recognized for its high quality teacher preparation program as a national center for teacher excellence;

2. Teaching education candidates from higher education institutions in this state have proven to be highly marketable nationwide due to the reputation this state has earned in producing outstanding teacher education graduates; and

3. West Virginia should utilize its reputation for exceptional achievement in this area by promoting our program to prospective students in teacher education programs to attract graduates nationwide for teaching positions in this state.

(b) Intent — It is the intent of the Legislature:

1. To create a permanent institute which, as an organized activity and on a continuous basis, will encourage and promote excellence and public awareness of the quality teacher preparation programs in our state;

2. To honor excellence in education, recognize exemplary teacher education graduates throughout the state and the nation, and recruit and supply for our public schools highly qualified teachers.

(c) For the purposes of this section, the following words have the meanings ascribed to them:

1. “Board” means the board of the institute as established by this section;
(2) "Chancellor" means the chief executive officer of the higher education policy commission;

(3) "Institute" means the national institute for teaching excellence established by this section;

(4) "Secretary" means the secretary of the department of education and the arts; and

(5) "Superintendent" means the state superintendent of schools.

(d) There is hereby established within the office of the secretary the national institute for teaching excellence. The institute shall be implemented by the secretary with the assistance of the superintendent and the chancellor.

(e) There is established the board of the institute which has the responsibility for developing, overseeing and implementing the operations of the institute. The board shall consist of seven members selected as follows:

(1) The secretary or a designee;

(2) The superintendent or a designee;

(3) The chancellor or a designee;

(4) One certified teacher, selected by the state board; and

(5) Three members selected by the secretary representing West Virginia higher education institutions with approved teacher education programs. Of the three members selected by the secretary, one shall represent a state university, one shall represent a public college, and one shall represent a private college.
(f) Members of the board serve terms of two years each and, at the expiration of their terms, may continue to serve until their respective successors are appointed. The secretary shall appoint a chairperson for the board from among the members thereof for a term of two years. The chairperson may continue to serve until his or her successor is appointed.

(g) The board has the following powers and duties:

1. To design and develop the institute;
2. To select annually a university or college within the state to host the institute;
3. To establish the application process, criteria and qualifications, and annually to make the final selection of two recent education graduates from each state to attend the institute academy;
4. To solicit, accept and expend for the purposes of this section any contribution, grant or appropriation from any source, and to pursue aggressively any federal or private funding available for these purposes;
5. To perform such other duties as considered necessary to carry out the purposes of this section;
6. To report by the first day of November, two thousand one, and annually thereafter, to the legislative oversight commission on education accountability on the progress of the institute. The initial report shall contain at least the following information:

(i) A design for administering a collaborative effort on the part of West Virginia colleges and universities with an approved teacher education program to provide a week-long summer academy for recent teacher education graduates nationwide;
(ii) Provisions, including appropriate sources of funds, for the institute to man an office throughout the year for the purpose of publishing materials, pursuing grant moneys, conducting research and providing data on excellence in teacher education; and

(iii) Provision for developing a certificate of recognition to be presented to each participant upon completion of the academy.

(h) Nothing in this section requires any level of funding by the Legislature or requires the board to implement the provisions of this section unless federal funds and/or private moneys have been secured for that purpose.

CHAPTER 115

(S. B. 724 — Originating in the Committee on Education)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article seventeen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four, all relating to authorizing rules; board of trustees; board of directors; higher education policy commission; reduced tuition and fee program for state residents who are at least sixty-five years of age; and higher education finance policy.

Be it enacted by the Legislature of West Virginia:
That sections one, 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; and that said article be further amended by adding thereeto a new section, designated section four, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-4. Higher education policy commission.

§18B-17-1. Legislative authorization; effective date of rules; technical deficiencies waived.

(a) Under the provisions of article three-a, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in this article, subject only to the limitations set forth with respect to each rule in the section or sections of this chapter authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized in this article are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret.

(b) The effective date of the legislative rules authorized in this article is governed by the provisions of section fourteen, article three-a, chapter twenty-nine-a of this code unless the governing board promulgating the rules establishes an effective date which is earlier than that provided by that section, in which case the effective date established by the governing board shall control, unless the Legislature, in the bill authorizing the rules, establishes an effective date for the rules, in which case the effective date established by the Legislature controls.
(c) The Legislature further declares each legislative rule now or hereafter authorized under this article to have been validly promulgated, notwithstanding any failure to comply with any requirement of article three-a, chapter twenty-nine-a of this code relating to the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in this article.

§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.

(1) 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 accountability 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.

(m) The legislative rules filed in the state register on the eleventh day of August, two thousand, relating to the board of trustees (reduced tuition and fee program for state residents who are at least sixty-five years of age), are authorized.

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred ninety-one, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of directors (report card), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the board of directors (equal opportunity and affirmative action), are authorized.
(c) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-one, relating to the board of directors (holiday policy), are authorized.

(d) The legislative rules filed in the state register on the nineteenth day of March, one thousand nine hundred ninety-two, as modified and refiled in the state register on the tenth day of July, one thousand nine hundred ninety-two, relating to the board of directors (presidential appointments, responsibilities and evaluations), are authorized.

(e) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred ninety-three, relating to the board of directors (acceptance of advanced placement credit), are authorized.

(f) The legislative rules filed in the state register on the tenth day of December, one thousand nine hundred ninety-three, relating to the board of directors (resource allocation policy), are authorized.

(g) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-four, relating to the board of directors (assessment, payment and refund of fees), are authorized.

(h) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of directors (personnel administration), are authorized.
(i) The legislative rules filed in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-four, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the nineteenth day of December, one thousand nine hundred ninety-four, relating to the board of directors (proprietary, correspondence, business, occupational and trade schools), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred ninety-five, relating to the board of directors (contracts and consortium agreements with public schools, private schools or private industry), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of November, one thousand nine hundred ninety-five, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the fourth day of January, one thousand nine hundred ninety-six, relating to the board of directors (higher education report cards), are authorized.

(l) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred ninety-seven, relating to the board of directors (Underwood-Smith teacher scholarship program), are authorized.

(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 and technical colleges), are authorized.

(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.

(c) 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 account-
ability and refiled 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.

(p) The legislative rules filed in the state register on the
twelfth day of June, two thousand, relating to the board of
directors (reduced tuition and fee program for state residents
who are at least sixty-five years of age), are authorized.

§18B-17-4. Higher education policy commission.

The legislative rule filed in the state register on the second
day of February, two thousand one, and modified and refiled on
the third day of April, two thousand one, relating to the higher
education policy commission (higher education finance policy),
are authorized.

CHAPTER 116

(Com. Sub. for H. B. 2897 — By Delegates Fahey, Hubbard, Morgan,
Mathews, Fox, L. Smith and Swartzmiller)
AN ACT to amend and reenact section seven, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing higher education adult part-time student grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study in demand occupations; changing out-dated terms and references; clarifying definition for eligible institutions; adding definitions for eligible programs and courses, postsecondary certificate program, demand occupation, industry recognized credential program, and skill development program; modifying definitions, clarifying program parameters and eligibility requirements to accommodate newly authorized programs; requiring commission to develop a legislative rule for implementation including allocation of funds and guidelines for calculating grant amounts; and authorizing emergency rule.

Be it enacted by the Legislature of West Virginia:

That section seven, article five, 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 5. HIGHER EDUCATION GRANT PROGRAM.

§18C-5-7. Higher education adult part-time student grant program.

(a) There is established the higher education adult part-time student grant program, hereafter referred to as the HEAPS grant program. The grant program established and authorized by this section is administered by the vice chancellor for administration. Moneys appropriated or otherwise available for such purpose shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.
(b) As used in this section, the following terms have the meanings ascribed to them:

(1) "Approved distance education" means a course of study offered via electronic access that has been approved for inclusion in the applicant's program of study by the eligible institution of higher education at which the applicant is enrolled or has been accepted for enrollment;

(2) "Part-time" means enrollment for not less than six nor more than eleven semester or term hours: Provided, That for no more than two semesters during the recipient's ten years of eligibility, the recipient may be considered to be enrolled part-time if he or she is enrolled for three or more semester or term hours: Provided, however, That in the case of enrollment in postsecondary certificate, industry recognized credential and other skill development programs in demand occupations in this state, "part-time" means enrollment on such basis as is established for the program in which enrolled.

(3) "Satisfactory academic progress" means maintaining a cumulative grade point average of at least 2.0 on a 4.0 grading scale with a goal of obtaining a certificate, associate degree or bachelor's degree. In the case of postsecondary certificate, industry recognized credential and other skill development programs, satisfactory academic progress means continuous advancement toward completion of the program on the normal schedule established for the program in which enrolled;

(4) "Eligible institution" means:

(A) Any community college; community and technical college; adult technical preparatory education program or training;
(B) Any state college or university, as those terms are defined in section two, article one, chapter eighteen-b of this code;

(C) Any approved institution of higher education as that term is defined in section two of this article; and

(D) Any approved distance education, including world wide web based courses;

(5) "Eligible program or programs" or "eligible course or courses" means, in addition to programs and courses offered by eligible institutions as defined in subdivision (4) of this subsection:

(A) Programs and courses offered by any nationally accredited degree granting institution of higher learning permitted pursuant to section five, article three, chapter eighteen-b of this code and approved by the joint commission for vocational-technical occupational education; and

(B) Any postsecondary certificate, industry recognized credential and other skill development programs of study as defined in this section in a demand occupation in this state;

(6) "State resident" means a student who has lived in West Virginia continuously for a minimum of twelve months immediately preceding the date of application for a HEAPS grant or renewal of a grant;

(7) "Postsecondary certificate program" means an organized program of study, approved by the joint commission for vocational-technical occupational education, with defined competencies or skill sets that may be offered for credit or non-credit and which culminates in the awarding of a certificate: Provided, That postsecondary certificate programs offered by eligible institutions as defined in subdivision (4) of this
subsection do not require the approval of the joint commission for vocational-technical occupational education;

(8) "Demand occupation" means any occupation having documented verification from employers that job opportunities in that occupation are currently available or are projected to be available within a year within the state or regions of the state. The joint commission for vocational-technical occupational education shall prepare and update annually a list of occupations that they determine meet the requirements of this definition;

(9) "Industry recognized credential program" means an organized program that meets nationally recognized standards in a particular industry, is approved by the joint commission for vocational-technical occupational education and which culminates in the awarding of a certification or other credential commonly recognized in that industry: Provided, That industry recognized credential programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission for vocational-technical occupational education; and

(10) "Skill development program" means a structured sequence or set of courses, approved by the joint commission for vocational-technical occupational education, with defined competencies that are designed to meet the specific skill requirements of an occupation and which culminates in the awarding of a certificate of completion that specifically lists the competencies or skills mastered: Provided, That skill development programs offered by eligible institutions as defined in subdivision (4) of this subsection do not require the approval of the joint commission.

(c) A person is eligible for consideration for a HEAPS grant if the person:
(1) Demonstrates that he or she has applied for, accepted, or both, other student financial assistance in compliance with federal financial aid rules, including the federal Pell grant;

(2) Qualifies as an independent student according to current federal financial aid criteria, unless the person is enrolling in a postsecondary certificate, industry recognized credential or other skill development program in a demand occupation in the state and has graduated from high school within the past two years;

(3) Demonstrates financial need for funds, as defined by legislative rule;

(4) Has not been enrolled in a high school diploma program, other than general education development (GED), for at least the two preceding years, unless the person applies the grant toward the cost of enrolling in a postsecondary certificate, industry recognized credential or other skill development program of study in a demand occupation in this state;

(5) Is a state resident and may not be considered a resident of any other state;

(6) Is a United States citizen or permanent resident thereof;

(7) Is not incarcerated in a correctional facility;

(8) Is not in default on a higher education loan; and

(9) Is enrolled in a program of study at less than the graduate level on a part-time basis in an eligible institution or program of study and is making satisfactory academic progress at the time of application: Provided, That the requirement that the student be making satisfactory academic progress may not preclude a HEAPS grant award to a student who has been
accepted for enrollment in an eligible institution or program of
study but has not yet been enrolled.

(d) Each HEAPS grant award is eligible for renewal until
the course of study is completed, but not to exceed an additional
nine years beyond the first year of the award.

(e) The higher education policy commission shall propose
a legislative rule pursuant to article three-a, chapter twenty-
nine-a of this code to implement the provisions of this section
which shall be filed with the legislative oversight commission
on education accountability by the first day of September, two
thousand one. The Legislature hereby declares that an emer-
gency situation exists and, therefore, the policy commission
may establish, by emergency rule, under the procedures of
article three-a, chapter twenty-nine-a of this code, a rule to
implement the provisions of this section, after approval by the
legislative oversight commission on education accountability.

(f) The legislative rule shall provide at least the following:

(1) That consideration of financial need, as required by
subdivision (3), subsection (c) of this section, include the
following factors:

(A) Whether the applicant has dependents as defined by
federal law;

(B) Whether the applicant has any personal hardship as
determined at the discretion of the vice chancellor for adminis-
tration; and

(C) Whether the applicant will receive any other source of
student financial aid during the award period.

(2) That an appropriate allocation process be provided for
distribution of funds directly to the eligible institutions or
programs based on the part-time enrollment figures of the prior year;

(3) That not less than twenty-five percent of the funds appropriated in any one fiscal year be used to make grants to students enrolled in postsecondary certificate, industry recognized credential and other skill development programs of study: Provided, That after giving written notice to the legislative oversight commission on education accountability, the vice chancellor for administration may allocate less than twenty-five percent of the funds for such grants;

(4) That any funds not expended by an eligible institution or program at the end of each fiscal year shall be returned to the vice chancellor for administration for distribution under the provisions of this section; and

(5) That the amount of each HEAPS grant award be determined using the following guidelines:

(A) The amount of any HEAPS grant awarded to a student per semester, term hour or program for those students who are enrolled in eligible institutions or programs operated under the jurisdiction of an agency of the state or a political subdivision thereof shall be based upon the following:

(i) Actual cost of tuition and fees;

(ii) The portion of the costs determined to be appropriate by the commission; and

(iii) In addition to factors (i) and (ii) above, in determining the amount of the award, the vice chancellor may consider the demand for the program pursuant to subdivision (8), subsection (b) of this section; and
(B) The amount of any HEAPS grant awarded to a student who is enrolled in any other eligible institution, program or course shall be no greater than the average amount for comparable programs or courses as determined pursuant to the provisions of paragraph (A) above.

(g) The vice chancellor for administration shall report annually, by the first day of December, on the status of the HEAPS grant program to the legislative oversight commission on education accountability.

(h) The HEAPS grant program is subject to any provision of this article not inconsistent with the provisions of this section.

CHAPTER 117

(Com. Sub. for H. B. 3066 — By Delegates Manuel, Mahan, Coleman, Craig, C. White and Smirl)

[Passed April 14, 2001; in effect September 1, 2001. Approved by the Governor.]
and thirty, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section twenty-four-a; and to amend and reenact section twenty-three, article five of said chapter, all relating to election law reform; increasing authorized number of registered voters for certain precincts; removing limitations on the number of absentee paper ballots to be printed; expanding time period for voter registration; authorizing any registered voter to vote in person during absentee voting period; expanding absentee voting by mail and emergency absentee voting; transferring authority to conduct absentee voting from circuit clerks to county clerks and providing exceptions thereto; authorizing county commissions to designate area within county courthouse or annex for absentee voting; making certain technical revisions; expanding time period for absentee voting to Monday before election; clarifying time for absentee voting on Saturday before election; providing for contents of absentee ballots; providing for the acceptance of absentee ballots returned by mail or other express shipping service; providing for acceptance of absentee ballots received from certain uniform services and overseas voters; requiring that a set of emergency absentee ballot commissioners be persons of different registered party affiliations; prohibiting persons who have voted an absent voter’s ballot from voting on election day; eliminating challenge to such ballot; clarifying authority to challenge certain ballots; prohibiting purchase of punch card voting system for any election subsequent to the general election in two thousand; providing for electronic voting systems by which votes may be recorded on a display screen by means of a stylus or by means of a touch; authorizing county commissions to share automatic tabulating equipment; and eliminating requirement that petition circulators be registered to vote in this state; clarifying requirement of both poll clerk signatures on absentee ballots.

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

**Article**
2. Registration of Voters.
3. Voting by Absentees.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction ballots.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

The precinct shall be the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall
contain at least one voting precinct and each precinct shall have
but one voting place therein.

Each precinct within any urban center shall contain not less
than three hundred nor more than one thousand five hundred
registered voters. Each precinct in a rural or less thickly settled
area shall contain not less than two hundred nor more than
seven hundred registered voters, unless upon a written finding
by the county commission that establishment of or retention of
a precinct of less than two hundred voters would prevent undue
hardship to the voters, the secretary of state determines that
such precinct be exempt from the two hundred voter minimum
limit. If, at any time the number of registered voters exceeds the
maximum number specified, the county commission shall
rearrange the precincts within the political division so that the
new precincts each contain a number of registered voters within
the designated limits. If a county commission fails to rearrange
the precincts as required, any qualified voter of the county may
apply for a writ of mandamus to compel the performance of this
duty: Provided, That when in the discretion of the county
commission, there is only one place convenient to vote within
the precinct and when there are more than seven hundred
registered voters within the existing precinct, the county
commission may designate two or more precincts with the same
geographic boundaries and which have voting places located
within the same building. The county commission shall
designate alphabetically the voters who will be eligible to vote
in each precinct so created. Each such precinct shall be operated
separately and independently with separate voting booths, ballot
boxes, election commissioners and clerks, and whenever
possible, in separate rooms. No two of such precincts may use
the same counting board.

In order to facilitate the conduct of local and special
elections and the use of election registration records therein,
precinct boundaries shall be established to coincide with the
42 boundaries of any municipality of the county and with the
43 wards or other geographical districts of the municipality except
44 in instances where found by the county commission to be
45 wholly impracticable so to do. Governing bodies of all munici-
46 palities shall provide accurate and current maps of their
47 boundaries to the clerk of any county commission of a county
48 in which any portion of the municipality is located.

49 The provisions of this section are subject to the provisions
50 of section twenty-eight, article four of this chapter relating to
51 the number of voters in precincts in which voting machines are
52 used.

53 The county commission shall keep available at all times
54 during business hours in the courthouse at a place convenient
55 for public inspection a map or maps of the county and munici-
56 palities with the current boundaries of all precincts.

§3-1-21. Printing of official and sample ballots; number; packag-
ing and delivery, correction of ballots.

1 (a) The board of ballot commissioners for each county shall
2 provide the ballots and sample ballots necessary for the conduct
3 of every election for public officers in which the voters of the
4 county participate.

5 (b) The persons who shall provide the ballots necessary for
6 the conduct of all other elections shall be:

7 (1) The secretary of state, for any statewide special election
8 ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide
10 special election ordered by the county commission; or

11 (3) The board of education, for any special levy or bond
12 election ordered by the board of education; or
(4) The municipal board of ballot commissioners, for any election conducted for or within a municipality, except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those caused to be printed by the proper authorities as specified in this section shall not be cast, received or counted in any election.

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. The circuit clerk shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the circuit clerk, who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots contained therein. Each package of ballots for a precinct shall be clearly labeled, in a manner which cannot be altered, with the county name, the precinct number, and the number of ballots contained therein. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package, or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for the conduct of absentee voting in all voting systems shall be delivered to the circuit clerk of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be delivered to the circuit clerk of the
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46 election.

(f) Upon a finding of the board of ballot commissioners that
an official ballot contains an error which in the opinion of the
board is of sufficient magnitude as to confuse or mislead the
voters, the board shall cause the error to be corrected, either by
the reprinting of the ballots or by the use of stickers printed
with the correction and of suitable size to be placed over the
error without covering any other portion of the ballot.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

(a) Voter registration before an election shall close on the
twentieth day before the election, or on the first day thereafter
which is not a Saturday, Sunday or legal holiday.

(b) An application for voter registration, transfer of
registration, change of name or change of political party
affiliation submitted by an eligible voter by the close of voter
registration shall be effective for any subsequent primary,
general or special election if the following conditions are met:

(1) The application contains the required information as set
forth in subsection (c), section five of this article: Provided,
That incomplete applications for registration containing
information which are submitted within the required time may
be corrected within four days after the close of registration if
the applicant provides the required information; and

(2) The application is received by the appropriate clerk of
the county commission no later than the hour of the close of
registration or is otherwise submitted by the following dead-
lines:
(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and postmarked by the postal service no later than the date of the close of registration: Provided, That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application shall be received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application shall be received by the clerk, deputy clerk or registrar no later than the close of registration; and

(3) The verification notice required by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.
§3-3-2. Authority to conduct absentee voting; absentee voting application; form.
§3-3-2a. Voting booths within public view to be provided; prohibition against display of campaign material.
§3-3-2b. Special absentee voting list.
§3-3-3. Voting an absentee ballot in person.
§3-3-4. Assistance to voter in voting an absent voter’s ballot by personal appearance; penalties.
§3-3-5. Voting an absentee ballot by mail; penalties.
§3-3-5a. Processing federal postcard applications.
§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.
§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.
§3-3-7. Delivery of absentee ballots to polling places.
§3-3-9. Voting in person after having received and after having voted an absent voter’s ballot.
§3-3-10. Challenging of absent voters’ ballots.
§3-3-11. Preparation, number and handling of absent voters’ ballots.
§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

§3-3-1. Persons eligible to vote absentee ballots.

(a) Registered and other qualified voters of the county may vote an absentee ballot pursuant to the provisions of this article.

(b) All registered and other qualified voters of the county may vote an absentee ballot during the period of regular absentee voting in person.

c) Any registered voter or other qualified voter of the county who will be absent from the county throughout the regular period and available hours for voting in person because of personal or business travel or employment and who will be unable to receive an absentee ballot by mail at an address outside the county during that absence may vote an absentee ballot under special affidavit in person during the period of special absentee voting in person.

d) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: Provided, That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter, involving bribery in an election;
(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less; and

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability.
(e) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission: Provided, That if the clerk of the county commission and the clerk of the circuit court jointly petition the county commission setting forth their agreement that the clerk of the circuit court should continue to supervise and conduct the absentee voting, the county commission shall designate the
clerk of the circuit court to supervise and conduct the absentee voting; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "circuit clerk" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote an absentee ballot in any primary, general or special election is to make application in writing in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the secretary of state, and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested, and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required, and an indication as to whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard
application for absentee ballot form issued under authority of
that act; or

(3) For any person unable to obtain the official form for
absentee balloting at a reasonable time before the deadline for
an application for an absentee ballot by mail is to be received
by the proper official, the completed application may be in a
form set out by the voter, provided all information required to
meet the provisions of this article is set forth and the application
is signed by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided; prohi-
bition against display of campaign material.

Throughout the period of absentee voting in person, the
official designated to supervise and conduct absentee voting
shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting
booths or devices appropriate to the voting system at which
voters may prepare their ballots. The booths or devices are to be
in an area separate from but within clear view of the public
entrance area of the official’s office or other area designated by
the county commission for absentee voting, and are to be
arranged to ensure the voter complete privacy in casting the
ballot.

(2) The official shall make the voting area secure from
interference with the voter and shall ensure that voted and
unvoted ballots are at all times secure from tampering. No
person, other than a person lawfully assisting the voter accord-
ing to the provisions of this chapter, may be permitted to come
within five feet of the voting booth while the voter is voting. No
person, other than the officials or employees of the official
designated to supervise and conduct absentee voting or mem-
bers of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

(3) The official designated to supervise and conduct absentee voting shall request the county commission designate another area within the county courthouse or any annex of the courthouse as a portion of the official’s office for the purpose of absentee voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;
(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting;
(C) If the voting area is not accessible, except by way of a metal detector; or
(D) If there is no suitable area for absentee voting within the office.

Any designated area is subject to the same requirements as the regular absentee voting area.

(4) No person may do any electioneering, nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse or any annex facilities during the entire period of regular in person absentee voting. The official designated to supervise and conduct absentee voting is hereby authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

§3-3-2b. Special absentee voting list.
(a) Any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) The application is to be on a form prescribed by the secretary of state which is to include the voter's name and signature, residence address, a statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect.

(c) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list, which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United State postal service; or (4) the death of the person.

(d) The official designated to supervise and conduct absentee voting shall mail an application for an absentee ballot by mail to each person active on the special absentee voting list not later than forty-two days before each election.

§3-3-3. Voting an absentee ballot in person.

(a) Regular absentee voting in person is to be conducted during regular business hours beginning on the fifteenth day
before the election and continuing through the Monday before
the election for any election held on a Tuesday, or continuing
through the day before the election for any election held on
another day. For any election held on a Tuesday, regular
absentee voting in person is to be available from nine a. m. to
five p. m. on the Saturday before the election.

(b) Special absentee voting in person for persons eligible to
vote an absentee ballot under the provisions of subsection (c),
section one of this article is to be conducted during regular
business hours in the office of the official designated to
supervise and conduct absentee voting beginning on the forty-
second day before the election and continuing until the first day
when regular absentee voting in person begins. Any person
seeking to vote absentee under this subsection is to first give an
affidavit, on a form prescribed by the secretary of state, stating
under oath the specific circumstances which prevent voting
absentee during the period for regular absentee voting in person
or by mail.

(c) Upon oral request, the official designated to supervise
and conduct absentee voting shall provide the voter with the
appropriate application for voting absentee in person, as
provided in this article. The voter shall complete and sign the
application in his or her own handwriting or, if the voter is
unable to complete the application because of illiteracy or
physical disability, the person assisting the voter and witnessing
the mark of the voter shall sign his or her name in the space
provided.

(d) Upon completion, the application is to be immediately
returned to the official designated to supervise and conduct
absentee voting, who shall determine:

(1) Whether the application has been completed as required
by law;
(2) Whether the applicant is duly registered to vote in the precinct of his or her residence, and, in a primary election, is qualified to vote the ballot of the political party requested; and

(3) Whether the applicant is authorized for the reasons given in the application to vote an absentee ballot by personal appearance during the special absentee voting period at the time of the application.

(e) If the official designated to supervise and conduct absentee voting determines the conditions provided in subsection (d) of this section have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall challenge the voter’s absentee ballot as provided in this article.

(f) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the secretary of state:

(1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(3) For all punch card and paper ballot voting and for optical scan ballots voted after election supplies are delivered to the election supply commissioner, one envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”; and
(4) For optical scan voting systems, ballots, a secrecy sleeve and access to a ballot box secured by two locks with keys kept by the president of the county commission and the county clerk.

(g) The voter shall enter the voting booth alone and there mark the ballot. Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the punch card and paper absentee voter shall: (1) Place the ballot or ballots in envelope No. 1 and seal that envelope; (2) place the sealed envelope No. 1 in envelope No. 2 and seal that envelope; (3) complete and sign the forms on envelope No. 2; and (4) return that envelope to the official designated to supervise and conduct the absentee voting.

(h) Upon receipt of the sealed envelope, the official designated to supervise and conduct the absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope in a secure location in the official’s office, to remain until delivered to the polling place or, in the case of a challenged ballot, to the board of canvassers.

§3-3-4. Assistance to voter in voting an absent voter’s ballot by personal appearance; penalties.

(a) Any registered voter, who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write, may be given assistance by a person of the voter’s choice. Provided, That the 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.

(b) Any voter who requests assistance in voting an absent
data of that employer or
by the officer or agent of a labor union of which the voter is a
past or present member.

(b) Any voter who requests assistance in voting an absent
data of that employer or
by the officer or agent of a labor union of which the voter is a
past or present member.

(b) Any voter who requests assistance in voting an absent
voter’s ballot but who is determined by the official designated
to supervise and conduct absentee voting not to be qualified for
assistance under the provisions of this section and section
thirty-four, article one of this chapter may vote a challenged
absent voter’s ballot with the assistance of any person author-
ized to render assistance pursuant to this section. The official
designated to supervise and conduct absentee voting shall in
this case challenge the absent voter’s ballot on the basis of his
or her determination that the voter is not qualified for assis-
tance.

(c) Any one or more of the election commissioners or poll
clerks in the precinct to which an absent voter’s ballot has been
sent may challenge the ballot on the ground that the voter
received assistance in voting it when in his or their opinion: (1)
The person who received the assistance in voting the absent
voter’s ballot did not require assistance; or (2) the person who
provided the assistance in voting did not make an affidavit as
required by this section. The election commissioner or poll
clerk or commissioners or poll clerks making a challenge shall
enter the challenge and reason for the challenge on the form and
in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the
person who intends to provide a voter assistance in voting shall
make an affidavit, the form of which is to be prescribed by the
secretary of state, that he or she will 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 that he or she will not keep or make any memo-
randum or entry of anything occurring within the voting booth
or compartment, and that he or she will 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.

(e) In accordance with instructions issued by the secretary of state, the official designated to supervise and conduct absentee voting shall provide a form entitled “List of Assisted Voters”, prescribed by the secretary of state, which list is to be divided into two parts. Part A is to be entitled “Unchallenged Assisted Voters” and Part B is to be entitled “Challenged Assisted Voters.” Under Part A the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving unchallenged assistance in voting an absent voter’s ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absent voter’s ballot, the name of the person providing the voter with assistance in voting an absent voter’s ballot, the fact that the person rendering the assistance in voting made and subscribed to the oath required by this section, and the signature of the official designated to supervise and conduct absentee voting certifying to the fact that he or she had determined that the voter who received assistance in voting an absent voter’s ballot was qualified to receive the assistance under the provisions of this section. Under Part B the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter’s ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list
that the list is correct in all particulars; if no voter has been
assisted in voting an absent voter’s ballot as provided in this
section, the official designated to supervise and conduct
absentee voting shall make and subscribe to an oath of that fact
on the list. The “List of Assisted Voters” is to be available for
public inspection in the office of the official designated to
supervise and conduct absentee voting during regular business
hours throughout the period provided for voting an absent
voter’s ballot by personal appearance, and unless otherwise
directed by the secretary of state, the official shall transmit the
list, together with the affidavits, applications and absent voters’
ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this
section from persons providing assistance in voting, together
with the “List of Assisted Voters”, are to 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 and list available for public inspection and who
shall preserve the oaths and list for twenty-two months or, if
under order of the court, until their destruction or other disposi-
tion is authorized or directed by the court.

(g) Any person making an affidavit required under the
provisions of this section who knowingly swears falsely in the
affidavit, or any person who counsels or 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 confined in the
county or regional jail for a period of not more than one year,
or both.

(h) Any person who provides a voter assistance in voting an
absent voter’s ballot in the office of the official designated to
supervise and conduct absentee voting who is not qualified or
permitted by this section to provide assistance 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.

(i) Any official designated to supervise and conduct
absentee voting, election commissioner or poll clerk who
authorizes or allows a voter to receive or to have received
unchallenged assistance in voting an absent voter’s ballot when
the voter is known to the official designated to supervise and
conduct absentee voting or election commissioner or poll clerk
not to be or have been authorized by the provisions of this
section to receive or to have received assistance in voting 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.

(j) The term “physical disability” as used in this section
means blindness or a degree of blindness as will prevent the
voter from seeing the names on the ballot, or amputation of
both hands, or a disability of both hands that neither can be
used to make cross marks on the absent voter’s ballot.

§3-3-5. Voting an absentee ballot by mail; penalties.

(a) Upon oral or written request, the official designated to
supervise and conduct absentee voting shall provide to any
voter of the county, in person, by mail or by facsimile, if the
official has access to facsimile equipment, the appropriate
application for voting absentee by mail, as provided in this
article. The voter shall complete and sign the application in his
or her own handwriting or, if the voter is unable to complete the
application because of illiteracy or physical disability, the
person assisting the voter and witnessing the mark of the voter
shall sign his or her name in the space provided.
b) Completed applications for voting an absentee ballot by mail is to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail or by facsimile, if the official has access to facsimile equipment, within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (d), section one of this article, relating to absent uniformed services and overseas voters, not earlier than the first day of January of an election year, or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter’s request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of subdivision (2)(A), (2)(B), (3) or (4), subsection (d), section one of this article;
(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

d) If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter’s absentee ballot will be challenged as provided in this article, and shall enter that challenge.

e) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as prescribed by the secretary of state:

(1) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) One envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(3) One postage paid envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”;

(4) Instructions for voting absentee by mail; and
(5) Any other supplies required for voting in the particular voting system.

(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article. After the voter has voted the ballot or ballots, the voter shall: (1) Place the ballot or ballots in envelope no. 1 and seal that envelope; (2) place the sealed envelope no. 1 in envelope no. 2 and seal that envelope; (3) complete and sign the forms on envelope no. 2; and (4) return that envelope to the official designated to supervise and conduct absentee voting.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if: (1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or (2) the ballot bears a postmark of the United States postal service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (d), section one of this article, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following
the election, after which time they are to be destroyed without
being opened.

(j) Absentee ballots which are hand delivered are to be
accepted if they are received by the official designated to
supervise and conduct absentee voting no later than the day
preceding the election: Provided, That no person may hand
deliver more than two absentee ballots in any election, and any
person hand delivering an absentee ballot is required to certify
that he or she has not examined or altered the ballot. Any
person who makes a false certification violates the provisions
of article nine of this chapter and is subject to those provisions.

(k) Upon receipt of the sealed envelope, the official
designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent
record of persons applying for and voting an absentee ballot in
person, and

(4) Place the sealed envelope in a secure location in the
official's office, to remain until delivered to the polling place
or, in the case of a challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal postcard applications.

When a federal postcard registration and absentee ballot
request (FPCA), as defined in subdivision (2), subsection (b),
section two of this article, is received by the official designated
to supervise and conduct absentee voting, the official shall
examine the application and take the following steps:

(1) The official shall first enter the name of the applicant in
the permanent absentee voter's record for each election for
which a ballot is requested, make a photocopy of the application for each election for which a ballot is requested and place the separate copies in secure files to be maintained for use in the various elections.

(2) The official designated to supervise and conduct absentee voting shall determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is not registered, or not registered at the address given, the official shall deliver the original FPCA to the clerk of the county commission for processing, and the clerk of the county commission shall process the application as an application for registration and, if the application is received after the close of voter registration for the next succeeding election, the official shall challenge the absentee ballot for that election.

(3) Except as provided in subdivision (2) of this section, the federal application for an absentee ballot received from a person qualified to use the application as provided in section two of this article is to be processed as all other applications and the ballot or ballots for each election for which ballots are requested by the applicant is to be mailed to the voter on the first day on which both the application and the ballot are available.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absentee ballot in accordance with subdivision (3), subsection (d), section one of this article may apply not earlier than the first day of January of an election year for a special write-in absentee ballot for a primary or general election, in conjunction with the application for a regular absentee ballot or ballots. If the application is received after the
forty-ninth day preceding the election, the official designated to supervise and conduct absentee voting shall honor only the application for local, state and federal offices in general, special and primary elections.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot, the voter must state that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the secretary of state and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of the application within the time required, the official designated to supervise and conduct absentee voting shall issue the special write-in absentee ballot which is to be the same ballot issued under the provisions of 42 U.S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The ballot is to permit the elector to vote in a primary election by indicating his or her political party affiliation and the names of the specific candidates for each office, and in a general election by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the official designated to supervise and conduct absentee voting from a voter: (1) Who mailed the write-in ballot from any location within the United States; (2) who did not apply for a regular absentee ballot; (3) who did not apply for a regular absentee ballot by mail; or (4) whose application for a regular
§3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in subsection (e), section one of this article may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat; or (2) nursing homes within the county: Provided, That the policy is to be adopted by the county commission at least ninety days prior to the election that will be affected and a copy of the policy is to be filed with the secretary of state.

(b) On or before the fifty-sixth day preceding the date on which any election is to be held the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners have the
same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter’s immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day, shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the secretary of state and is to include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy, he or she is to make his or her mark on the signature line provided for an illiterate applicant which mark is to be witnessed.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confine-
ment of the person applying for an emergency absentee ballot, and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting and, upon delivering the application and the voted ballot to the official, sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of section ten of this article.

(h) Upon receiving the application and emergency absentee ballot, the official designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, then the ballot is to be challenged for the appropriate reason provided for in section ten of this article.
(i) If either or both of the emergency absentee ballot commissioners should refuse to sign any application for voting an emergency absentee ballot, then the voter may vote as an emergency absentee and the ballot is to be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of section six of this article. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

§3-3-7. Delivery of absentee ballots to polling places.

(a) Except as otherwise provided in this article, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting, and any forms, lists and records as may be designated by the secretary of state, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) For optical scan voting systems, all ballots voted before the precinct supplies are delivered to the precinct supply commissioner are to be deposited in the ballot box. The ballots deposited in the ballot box shall be counted and merged with the election day ballots at the counting center on election night.

(c) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant
to section twenty-four, article one of this chapter, by the official
designated to supervise and conduct absentee voting in person,
or by messenger, before the closing of the polls, provided the
ballots are received by the official in time to make the delivery.
Any ballots received by the official after the time that delivery
may reasonably be made but within the time required as
provided in subsection (g), section five of this article, are to be
delivered to the board of canvassers along with the challenged
ballots.

§3-3-9. Voting in person after having received and after having
voted an absent voter’s ballot.

(a) Any person who has applied for and received an absent
voter’s ballot but has not voted and returned the same to the
official designated to supervise and conduct absentee voting
may vote in person at the polls on election day provided he or
she returns the absent voter’s ballot to the election commis-
ners at the polling place. Upon return of the absent voter’s ballot
the election commissioners shall destroy the ballot in the
presence of the voter, and one of the poll clerks shall make a
notation of this fact as directed by instructions issued by the
secretary of state. In the event the person does not return the
absent voter’s ballot, he or she will have his or her vote
challenged by one or more of the election commissioners or
poll clerks.

(b) No person who has voted an absent voter’s ballot may
vote in person on the day of the election.

§3-3-10. Challenging of absent voters’ ballots.

(a) The official designated to supervise and conduct
absentee voting may challenge an absent voter’s ballot on any
of the following grounds:
(1) That the application for an absent voter’s ballot has not been completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter’s ballot is not true;

(3) That the applicant for an absent voter’s ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the person voting an absent voter’s ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter’s ballot;

(5) That the person who voted an absent voter’s ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this article for assistance; and

(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times:
Provided, That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.
(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter’s ballot on any of the following grounds:

(1) That the application for an absent voter’s ballot was not completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter’s ballot is not true;

(3) That the person voting an absent voter’s ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the signatures of the person voting an absent voter’s ballot as they appear on his or her registration record, his or her application for an absent voter’s ballot, and the absent voter’s ballot envelope are not in the same handwriting;

(5) That the absent voter’s ballot does not have the official seal of the clerk of the circuit court and all signatures of members of the board of ballot commissioners on it;

(6) That the person voting an absent voter’s ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the absent voter’s ballot;
(7) That the person voted an absent voter’s ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;

(8) That the person who voted the absent voter’s ballot voted in person at the polls on election day;

(9) That the person voted an absent voter’s ballot under authority of subdivision (3), subsection (d), section one of this article and is or was present in the county in which he or she is registered to vote between the opening and closing of the polls on election day;

(10) That the person who voted an absent voter’s ballot had died before election day; and

(11) On any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

No challenge may be made to any absent voter ballot if the voter was registered and qualified to vote pursuant to the provisions of subsection (b), section one of this article.

(c) Forms for, and the manner of, challenging an absent voter’s ballot under the provisions of this article are to be prescribed by the secretary of state.

(d) Absent voters’ ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters’ ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged
§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided for in any specific election law in which case the lesser number of days applies, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters' ballots that are to be printed under their directions as provided in this chapter, and those ballots are to be delivered to the clerk of the circuit court of the county not less than forty-two days before the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his or her official seal and he or she and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back of the ballot. The clerks of the circuit courts are authorized to have their signatures affixed by a facsimile printed on the back of absentee ballots, by a facsimile signature stamp, or by signing their original signatures. An absent voter's ballot not containing the seal and signatures is invalid and is subject to challenge by any election commissioner or poll clerk.
(b) The official designated to supervise and conduct absentee voting shall be primarily responsible for the mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He or she shall keep a record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of those ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered or mailed, or by whom they have been marked, if marked before him or her.

§3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

(a) The secretary of state shall make, amend and rescind rules, regulations, orders and instructions, and prescribe forms, lists and records, and consolidation of forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absentee voter law of this state. In the case of West Virginia voters residing outside the continental United States, the secretary of state shall promulgate rules and regulations necessary to implement procedures relating to absentee voters contained in 42 U. S. C. §1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986 and shall forward a copy of the act to all officials designated to supervise and conduct absentee voting before the first day of January of each even-numbered year.

(b) The secretary of state may establish special procedures to allow absentee voting for those categories of registered
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18 voters who, because of special circumstances, would otherwise be unable to vote in the election.

(c) It is the duty of all officials designated to supervise and conduct absentee voting, other county officers, and all election commissioners and poll clerks to abide by the rules, regulations, orders and instructions and to use the forms, lists and records which may include or relate to:

(1) The consolidation of the two application forms provided for in this article into one form;

(2) The size and form of absent voter's ballot envelope nos. 1 and 2, and carrier envelopes;

(3) The information which is to be placed on absent voter's ballot envelope no. 1 and the forms and information which are to be placed on absent voter's ballot envelope no. 2;

(4) The forms and manner of making the challenges to absentee ballots authorized by this article;

(5) The forms of, information to be contained in, and consolidation of lists and records pertaining to applications for, and voting of, absentee ballots and assistance to persons voting absentee ballots;

(6) The supplying of application forms, envelopes, challenge forms, lists, records and other forms; and

(7) The keeping and security of voted absentee ballots in the office of the official designated to supervise and conduct absentee voting.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-1. Use of electronic voting systems authorized.
§3-4A-2. Definitions.
§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

§3-4A-9. Minimum requirements of electronic voting systems.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

§3-4A-16. Delivery of vote recording devices; time, arrangement for voting.

§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.

§3-4A-20. "Independent" voting in primary elections.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.


§3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

§3-4A-26. Test of automatic tabulating equipment.

§3-4A-27. Proceedings at the central counting center.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

§3-4A-1. Use of electronic voting systems authorized.

1. (a) Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections: Provided, That the use thereof shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

2. (b) Notwithstanding any other provision of this code, no electronic voting system which utilizes a ballot or any vote recording device by which votes are cast by means of perforat-
§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

(a) “Automatic tabulating equipment” means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

(b) “Ballot” means a tabulating card or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

(c) “Ballot labels” means the cards, papers, booklet, pages or other material showing the names of offices and candidates and the statements of measures to be voted on, which are placed on the vote recording device used for recording votes by means of perforating, or which are displayed on a screen upon which votes may be recorded by means of a stylus or by means of touch;

(d) “Central counting center” means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

(e) “Electronic voting system” is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disc, or by touching a screen with a stylus or by means of touch, and votes are subsequently counted by automatic tabulating equipment at the central counting center;
(f) "Program deck" means the actual punch card deck or decks, or a computer program disk, diskette, tape or other programming media, containing the program for counting and tabulating the votes, including the "application program deck";

(g) "Application program deck" means the punch card deck or equivalent capacity in other program medias as provided, containing specific options used and necessary to modify the program of general application, to conduct and tabulate a specific election according to applicable law;

(h) "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented; and

(i) "Vote recording device" means equipment in which ballot labels and ballots are placed to allow a voter to record his or her vote by perforating or equipment with a screen upon which votes may be recorded by means of a stylus or by means of touch.

§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

(1) By purchasing the same and paying the purchase price in cash from funds available from the maximum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease and paying the rentals in cash from funds available from the maximum general levy or any other lawful source.
(b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor in cash from funds available from the maximum general levy or other lawful source.

(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

(d) A county commission is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(e) The county commission may also secure a counting center.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the state election commission or be purchased, leased or used, by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting, or, at the voter’s election, provides for open voting;

(2) It is constructed to ensure that no person, except in instances of open voting, as provided for in this section, can see or know for whom any voter has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each
voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered, or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons, and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It permits each voter at any election other than primary elections, by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter.
(10) It permits each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote, and precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for nonpartisan nomination or election, and permits him or her to vote on public questions;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and accommodates the wording of at least fifteen questions;

(13) Where vote recording devices are used, they:
   (A) Are durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;
   (B) Are so constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices, and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement, or are constructed to ensure that the screens upon which appear the names of the candidates and their respective parties, titles of offices, and wording of questions are reasonably protected from any modification;
   (C) Bear a number that will identify it or distinguish it from any other machine;
(D) Are constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice, and upon any public question;

(E) Are accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;

(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion, and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(I) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to allow election commissioners to
spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place, and cannot be recalled by a poll clerk to complete his or her ballot;

(J) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record challenged ballots;

(K) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device’s internal nonvolatile electronic memory, and contain an internal security, the absence of which prevents substitution of any other device;

(L) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, store each vote in no fewer than three separate, independent, nonvolatile electronic memory components, and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(M) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(N) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to record all preelection, election and postelection activities, including all ballot images and system
anomalies, in each device’s internal electronic memory, and are to be accessible in electronic or printed form;

For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and postelection activities, including all ballot images and system anomalies, stored in the device’s internal electronic memory, and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, are constructed to prevent the loss of any votes, as well as all preelection, election and postelection activities, including all ballot images and system anomalies, stored in each device’s internal electronic memory, even in case of an electrical and battery power failure.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

(a) The ballot commissioners of any county in which an electronic voting system utilizing voting devices for registering the voter’s choices is to be used in any election shall cause to be printed for use in the election the ballot cards and ballot labels, as appropriate, for the electronic voting system, or shall cause to be printed a reasonable facsimile of the screens as they appear to the voter for the electronic voting system.

(1) The ballot labels are to be clearly printed in black ink on clear white material of a size as will fit the vote recording devices or as will be displayed on the screens as they appear to the voter for the electronic voting system. Arrows are to be
printed on the ballot labels to indicate the place to punch the
ballot card, which may be to the right or left of the name or
proposition, or boxes are to be printed as they appear to the
voter on the screens for the electronic voting system.

(2) The ballot labels are to contain the party emblem and
are to clearly indicate the party designation of each candidate.
The titles of offices may be arranged on the ballot labels in
vertical columns or in a series of separate pages, and are to be
printed above or at the side of the names of candidates so as to
indicate clearly the candidates for each office and the number
to be elected. The names of candidates for each office are to be
printed in vertical columns or on separate pages, grouped by the
offices which they seek.

(3) For the primary election, the heading of the ballot, the
type faces, the names and arrangement of offices and the
printing of names and arrangement of candidates within each
office are to conform as nearly as possible to the provisions of
sections thirteen and thirteen-a, article five of this chapter.

(4) For the general election, the heading of the ballot, the
straight ticket positions, the instructions to straight ticket voters,
the type faces, the names and arrangement of offices and the
printing of names and the arrangement of candidates within
each office are to conform as nearly as possible to the provi-
sions of section two, article six of this chapter, except as
otherwise provided in this article. Except for electronic voting
systems that utilize a screen upon which votes may be recorded
by stylus or by means of touch, the secretary of state shall
assign uniform numbers to be used by all counties using
electronic voting for all straight party tickets and for all
candidates running for offices to be voted upon by all of the
voters of the state. After taking into account the numbers so
assigned by the secretary of state, the clerk of the circuit court
shall arrange the offices and the candidates within each office
as prescribed by section two, article six of this chapter, and shall assign the appropriate number for each candidate. When one candidate is to be elected and only two parties are on the ballot, the ballot label and the arrangement of the ballot are to conform as nearly as practical to the following example:

- - - - - - - - - - - - - - - - - - -
Democratic Ticket

- - - - - - - - - - - - - - - - - - -
Republican Ticket

For Governor (Vote for One)

For Governor (Vote for One)

(candidate’s name) 10 —
(residence, county)

— 11 (candidate’s name)
(residence, county)

When more than two parties are on the ballot for an office, the arrangement of the ballot is to be specified by the secretary of state, and may conform to the following example if practical:

- - - - - - - - - - - - - - - - - - -
For Governor (Vote for One)

Democrat (candidate’s name) 10 —
(residence, county)

Republican (candidate’s name) 11 —
(residence, county)

People’s (candidate’s name) 12 —
(residence, county)
The ballot label and the arrangement of the ballot for multi-
candidate offices are to conform as nearly as practical to the
following example:

Democratic Ticket

Republican Ticket

For House of Delegates
First Delegate District
(Vote For Not More Than Two)
[If you marked a straight
ticket and you mark any
candidate in a different
party for this office, you
must mark all your choices
because your straight ticket
vote will not be counted
for this office.]

(candidate’s name) 69 —
(residence, county)

— 70 (candidate’s name)
(residence, county)

(candidate’s name) 71 —
(residence, county)

— 72 (candidate’s name)
(residence, county)

(5) Any nonpartisan office, including board of education
and any question to be voted on is to be placed or displayed on
a separate page or otherwise separated from the partisan ballots,
constituting a separate ballot where required.

(6) In elections in which voters are authorized to vote for
official write-in candidates whose names do not appear on the
ballot label, there are to be provided, as described in this
section, a write-in position on the ballot label for the voter to indicate his or her preference for a write-in candidate and a form on the inside of the secrecy envelope to permit a voter to enter the title of the office and the names of official write-in candidates for whom he or she wishes to vote: Provided, That if an electronic voting system that utilizes a screen upon which votes may be recorded by means of a stylus or by means of touch is used, the devices are to provide an alpha-numerical screen which allows the voter to, by use of a stylus or by touch, to enter the name of the write-in candidate for whom he or she wishes to vote.

For an office to be filled by election in a primary, except delegate to national convention, and for each office in a general election, the ballot label is to include, following all candidates for the office, a single numbered position with an arrow or box indicating the location to punch the ballot card or touch the screen to indicate a preference for a write-in candidate. The following instructions are to be printed beside the arrow in at least ten point type. "TO WRITE-IN FOR THIS OFFICE: Punch here and put name of office and candidate on inside of secrecy envelope. DO NOT put name here," or, if an electronic voting system is used with screens upon which votes may be recorded by means of a stylus or by means of touch, the word "WRITE-IN" will appear beside a box indicating the location for the voter to touch the screen and, when activated, another screen is to appear allowing the voter to enter a write-in candidate.

(7) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots, facsimile diagrams of the vote recording device ballot and official printed ballots or ballot cards adequate for the orderly conduct of the election in each precinct in their county.
(b) The ballot commissioners shall provide all other materials and equipment necessary to the conduct of the election, including voting booths, appropriate facilities for the reception and safekeeping of ballot cards, the ballots of absentee and of challenged voters and of “independent” voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names are to conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpartisan elections for board of education and any question to be voted upon are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and constituting a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot.
which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(3) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words or “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the secretary of state for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot which is to be numbered sequentially in the same manner as provided in this article for ballots upon which votes are recorded by means of perforating or is to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots as provided in this chapter.
In addition to the official ballots, the ballot commission-
ers shall provide all other materials and equipment necessary to
the proper conduct of the election.

§3-4A-12. Ballot label arrangement in vote recording devices;
sealing of devices; record of identifying numbers.

In counties using electronic voting systems utilizing vote
recording devices:

1. The number of ballot labels printed, where applicable,
   are to equal one and one-half times the total number of corre-
sponding vote recording devices to be used in the election. All
   labels are to be delivered to the clerk of the county commission
   at least thirty-five days prior to the election. The circuit clerk
   shall immediately examine the ballot labels for accuracy and
   assure that the appropriate ballot labels are designated for each
   voting precinct.

2. The total number of ballot cards printed and the number
   packaged for each precinct and the requirements for ballot
   colors and packaging are to conform as nearly as possible to the
   requirements for paper ballots. Official ballot cards printed and
   packaged for the various precincts are to be delivered to the
   clerk of the circuit court at least twenty-eight days prior to the
   election.

3. The necessary number of ballot cards, ballot labels,
sample ballots, and other supplies necessary for absentee voting
are to be delivered to the clerk of the circuit court at least
forty-two days prior to the election. The clerk shall immediately
check the ballot labels to assure their accuracy and shall place
them in vote recording devices which are clearly designated for
the proper district or party, or both, for the purpose of absentee
voting.
(4) When the ballot labels are delivered to the clerk of the county commission, the clerk shall place them in the vote recording devices in the proper order. The clerk of the county commission shall retain the remainder of the ballot labels for each machine for use in an emergency.

(5) The clerk of the county commission shall then seal the vote recording devices so as to prevent tampering with ballot labels, and enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific vote recording device or devices to be used in that precinct.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

(a) For the instruction of the voters on any election day in counties utilizing an electronic voting system where votes are to be recorded by means of perforating, there is to be provided for each polling place one instruction model for each vote recording device: Provided, That for electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, there is to be provided for each polling place a sample ballot with each screen as they shall appear on the devices, together with written instructions regarding the operation of the devices. Each instruction model is to be constructed so as to provide a replica of a vote recording device, and is to contain the arrangement of the ballot labels, party columns or rows, office columns or rows, and questions. Fictitious names are to be inserted in the ballot labels of the models. The models are to be located on the election officers’ tables or in some other place in which the voter must pass to reach the vote recording device. Upon request, the election officers shall offer instruction to each voter, before voting, in the operation of the vote recording device by use of
the instruction model, and shall give ample opportunity to
operate the model himself or herself.

(b) The ballot commissioners shall also provide facsimile
ballots or ballot labels, as may be appropriate, at least two of
which, or complete sets of which, are to be posted on the walls
of each polling place. The facsimile diagrams are exact dia-
grams of the ballots or ballot labels or paper ballots or screens
to the end that the voter may become familiar with the location
of the parties, offices, candidates and questions as they appear
on the ballot to be used in his or her precinct.

(c) The ballot commissioners may, with the consent of the
county commission, or the county commission may, prepare
and mail to each qualified voter at the address shown on the
registration books a facsimile sample of the ballot or ballot
labels or screens for his or her precinct.

(d) In counties where an electronic voting system has been
adopted, the legal ballot advertisements required by articles five
and six of this chapter which specify the publication of a
facsimile sample ballot, are to consist of a facsimile of the
ballot or ballot labels or screens with the names of the candi-
dates and the offices for which they are running shown in their
proper positions.

§3-4A-16. Delivery of vote recording devices; time, arrangement
for voting.

The clerk of the county commission shall deliver or cause
to be delivered each vote recording device, where applicable,
and the package of ballots to the polling place where they are to
be employed. The delivery is to be made not less than one hour
prior to the opening of the polls and is to be made in the
presence of the precinct election commissioners. At the time of
the delivery of the vote recording device, where applicable, and
the ballots, the device is to be sealed to prevent its use prior to
the opening of the polls and any tampering with the ballot
labels; and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote recording device is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission, that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon delivery, and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote recording device, where applicable, to be arranged in the voting booth in a manner that the front of the vote recording device on which the ballot labels appear will not be visible, when the vote recording device is being operated, to any person other than the voter if the voter elects to close the curtain, screen or hood to the voting booth.

§3-4A-17. Check of vote recording devices before use; corrections; reserve vote recording devices.

In counties utilizing an electronic voting system where votes are to be recorded by means of perforating or by touching a screen with a stylus or by means of touch before permitting the first voter to vote, the election commissioners shall examine the vote recording devices to ascertain whether the ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballot labels are arranged incorrectly, the commissioners shall immediately notify the clerk of the county commission of the foregoing facts in writing, indicating the number of the device, and obtain from the clerk a reserve vote recording device, and thereafter proceed to conduct the election. Any reserve vote recording device so used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote recording device is to be prepared, inspected and
15 sealed, and delivered to the polling place wherein the seal is to
16 be broken and the device opened in the presence of the precinct
17 election commissioners who shall certify in writing signed by
18 them to the clerk of the county commission, that the reserve
19 vote recording device was found to be sealed upon delivery to
20 the polling place, that the seal was broken and the device
21 opened in their presence at the polling place. The vote record-
22 ing device found to have been with incorrect ballot labels is to
23 be returned immediately to the custody of the clerk who shall
24 then promptly cause the vote recording device to be repaired,
25 prepared and resealed in order that it may be used as a reserve
26 vote recording device if needed.

§3-4A-19. Conducting electronic voting system elections gener-
1 ally; duties of election officers; penalties.

1 (a) The election officers shall constantly and diligently
2 maintain a watch in order to see that no person votes more than
3 once and to prevent any voter from occupying the voting booth
4 for more than five minutes.

5 (b) In primary elections, before a voter is permitted to
6 occupy the voting booth, the election commissioner represent-
7 ing the party to which the voter belongs shall direct the voter to
8 the vote recording device or supply the voter with a ballot, as
9 may be appropriate, which will allow the voter to vote only for
10 the candidates who are seeking nomination on the ticket of the
11 party with which the voter is affiliated.

12 (c) The poll clerk shall issue to each voter when he or she
13 signs the pollbook a card or ticket numbered to correspond to
14 the number on the pollbook of the voter, and in the case of a
15 primary election, indicating the party affiliation of the voter,
16 which numbered card or ticket is to be presented to the election
17 commissioner in charge of the voting booth.
(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote recording devices, place them in the voting booths, examine them to see that they have the correct ballots or ballot labels, where applicable by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, supplies, records and forms, and post the sample ballots or ballot labels and instructions to voters. Upon ascertaining that all ballots, supplies, records and forms arrived intact, the election commissioners shall certify their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

(e) Where applicable, each voter shall be instructed how to operate the vote recording device before he or she enters the voting booth.

(f) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, write the word "spoiled" across the face of the ballot, and place it in an envelope for spoiled ballots.
Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the pollbooks the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. If there is no discrepancy, the clerk of the county commission or a duly designated deputy clerk shall destroy the unused ballots forthwith by fire or otherwise, before a representative of each party on the ballot. If there is a discrepancy, the unused ballots are to be impounded and secured under double locks until the discrepancy is resolved. The county clerk and the president or president pro tempore of the county commission are each to have a key. Upon resolution of the discrepancy, the clerk of the county commission or a duly designated deputy clerk, shall destroy the unused ballots forthwith, by fire or otherwise, before a representative of each party on the ballot.

(g) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it 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 one year, or both.

(h) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election, and shall then destroy the ballots, by fire or otherwise.
(i) Where ballots are used, the voter, after he or she has marked his or her ballot shall, before leaving the voting booth, place the ballot inside the envelope provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked “spoiled” and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch, and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated, and the voter has departed the polling place, and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations, or an election commissioner and a poll clerk of different registered party affiliations, shall spoil the ballot.

(j) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the pollbooks, and shall place two copies of this report in the ballot box, or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations shall
forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor, which receipt carefully sets forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(k) The pollbooks, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot before any ballot is distributed to a voter. The requirement that two poll clerks sign a ballot according to this subsection is a mandatory duty and is not to be construed as merely directory.
(b) After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided in this section: *Provided, That* where an electronic voting system that utilizes screens upon which votes may be recorded by means of a stylus or by means of touch, an election commissioner shall accompany the voter to the voting device and shall activate the device for voting.

(c) In the course of an election contest, if it is established that a ballot does not contain the two signatures required by this section, the ballot is null, void and of no effect, and may not be counted. The requirement that a ballot not be counted if it does not meet the requirements of this section is mandatory and not to be construed as merely directory.


If at any primary elections, nonpartisan candidates for office and public questions are submitted to the voters on which persons registered as “independent” are entitled to vote, as provided in section eighteen, article two of this chapter, the election officers shall provide a vote recording device, where applicable, or the appropriate ballot to be marked by an electronically sensible pen or ink, or by means of a stylus or by means of touch, so that “independent” voters may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or shall provide a ballot containing only provisions for voting for those candidates and upon those issues submitted common to the ballots provided to all voters regardless of political party affiliation, or both.

In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the “independent” voters, provisions are to be
made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the independent voter to vote for the nonpartisan section or sections of the ballot or ballot labels. After the “independent” voter has voted, the temporary seals may be removed and the device may then be used by partisan voters.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

(a) Absentee voters shall cast their votes on absent voter ballots.

(b) If absentee voters are deemed eligible to vote in person at the office of the official designated to supervise and conduct absentee voting, in accordance with the provisions of article three of this chapter, the official for each county shall provide a vote recording device or other means, as may be appropriate for votes recorded by electronically sensible ink or pencil, or by means of a stylus or by means of touch, for the use of the absentee voters. Notwithstanding any provision of article three of this chapter to the contrary, any voter who desires to vote by absentee ballot in a county using an electronic voting system with a screen upon which votes are recorded by means of a stylus or by means of touch shall complete an application prescribed by the secretary of state which is to be processed in the manner otherwise prescribed by law, except that the official designated to supervise and conduct absentee voting shall deliver a copy of the application to each polling place. No voter who votes in person by absentee ballot may vote in person on the date of the election.

(c) For all absentee voters considered eligible to vote an absent voter’s ballot by mail, in accordance with the provisions of article three of this chapter, the official designated to supervise and conduct absentee voting for each county shall
prepare and issue an absent voter ballot packet consisting of the following:

(1) One official absent voter ballot;

(2) One punching tool for perforating or a device for marking by electronically sensible pen or ink, as may be appropriate;

(3) If a punching tool is to be utilized, one disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;

(4) One absent voter instruction ballot;

(5) One absent voter's ballot envelope No. 1, unsealed, which may have no writing on it and which is to be identical to the secrecy envelope used for placement of ballots at the polls; and

(6) One absent voter's ballot envelope No. 2, marked with the proper precinct number and providing a place on its seal for the absent voter to affix his or her signature. The envelope is also to contain the forms and instructions as provided in section five, article three of this chapter, relating to the absentee voting of proper ballots.

(d) Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot with the punch tool or marking device, whichever is appropriate, and the voter may receive assistance in voting his or her absent voter's ballot in accordance with the provisions of section six, article three of this chapter.

(e) After the voter has voted his or her absent voter's ballot, he or she shall: (1) Enclose the ballot in absent voter's ballot envelope No. 1, and seal that envelope; (2) enclose sealed
absent voter's ballot envelope No. 1 in absent voter's ballot envelope No. 2; (3) complete and sign the forms, if any, on absent voter's ballot envelope No. 2 according to the instructions on the envelope; and (4) mail, postage prepaid, sealed absent voter's ballot envelope No. 2 to the official designated to supervise and conduct absentee voting for the county in which he or she is registered to vote, unless the voter has appeared in person, in which event he or she shall hand deliver the sealed absent voter's ballot envelope No. 2 to the official.

(f) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall (1) enter onto the envelope any information as may be required of him or her according to the instructions on the envelope; (2) enter his or her challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail on a form prescribed by the secretary of state; and (4) place the sealed envelope in a secure location in his or her office, there to remain until delivered to the polling place in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a board of canvassers.

(g) Notwithstanding any provision of article three of this chapter to the contrary, no voter who has voted by absentee ballot in accordance with the provisions of article three of this chapter, or otherwise as provided by law, in a county using an electronic voting system with screens upon which votes are recorded by means of a stylus or by means of touch, may vote in person on the date of the election.

(h) When absent voters' ballots have been delivered to the election board of any precinct, the election commissioners shall, at the close of the polls, proceed to determine the legality of the ballots as prescribed in article three of this chapter. The
commissioners shall then open all of the absent voter’s ballot envelopes No. 2 which contain ballots not challenged and remove from the envelopes the absent voter’s ballot envelopes No. 1. These ballot envelopes No. 1 are then to be shuffled and intermingled. The election commissioners and poll clerks, in the presence of each other, shall next open all of the absent voter’s ballot envelopes No. 1 and remove the ballots from the envelopes. The poll clerks shall then affix their signatures to the ballots as provided in section nineteen-a of this article. The commissioners shall then insert each ballot into a secrecy envelope identical to the secrecy envelopes used for the placement of ballots of voters who are voting in person at the polls and shall deposit the ballot in the ballot box. The requirement that two poll clerks sign a ballot according to this subsection is a mandatory duty and is not to be construed as merely directory.

(i) In the course of an election contest, if it is established that a ballot does not contain the two signatures required by this section, the ballot is null, void and of no effect, and may not be counted. The requirement that a ballot not be counted if it does not meet the requirements of this section is mandatory and not to be construed as merely directory.


Except for electronic voting systems using screens on which votes may be recorded by means of a stylus or by means of touch, if the right of any person to vote be challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. He or she is to be provided with a challenged ballot and ballot envelopes for the insertion of the ballot after voting. There is to
be an inner envelope marked with the precinct number for the
challenged ballot. There is also to be another envelope for the
inner envelope and the challenged voter stub, which envelope
provides a place for the challenged voter to affix his or her
signature on the seal of the outer envelope.

After the county commission, as prescribed in article one of
this chapter, has determined that the challenges are unfounded,
the commissioners shall remove the outer envelopes. Without
opening the inner envelope, the commissioners shall shuffle and
intermingle the inner envelopes. The commissioners shall then
open the inner envelopes, remove the ballots and add the votes
to the previously counted totals.

§3-4A-24a. Voting by challenged voter where touch-screen elec-
tronic voting systems are used.

If the right of any person to vote is challenged in accor-
dance with the provisions of article one of this chapter, relating
to the challenging of voters, and a vote recording device or
ballot is used that tabulates the vote as an individual vote, the
person is to be permitted to cast his or her vote by use of the
vote recording device or ballot, as may be appropriate. An
election commissioner shall enter into the voting device a voter-
specific electronic code for any person voting a challenged
ballot. The devices are to retain challenged ballots in electronic
memory, and are not to be tabulated in accordance with the
provisions of this code, but are to be reviewed in accordance
with the provisions of this code.

After the county commission, as prescribed in article one of
this chapter, has determined that the challenges are unfounded,
the commissioners shall ensure that the ballots are included in
the tabulation.

§3-4A-26. Test of automatic tabulating equipment.
One week prior to the start of the count of the votes recorded on ballots or ballot cards or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test is to be given not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.

The test is to be open to representatives of the political parties, candidates, the press and the public. It is to be conducted five times by processing two separate sets of a preaudited group of ballots or ballot cards as appropriate, punched or marked as to record a predetermined number of valid votes for each candidate on each measure. It includes for each multicandidate office one or more ballot cards which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and applicable law, and it includes for each office one or more ballot cards which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by them, the nature of the error, the cause thereof and the type of corrective action taken. The certification is to be recorded in the office of the clerk of the county commission in the miscellaneous record book. Immediately after conclusion of this completed test, a certified duplicate copy of the program deck is to be sent by certified mail to the offices of the state election
commission, where it is to be preserved and secured for one year, and made available for comparison or analysis by order of a circuit court or the supreme court of appeals.

The program deck to be used in the election is to immediately be certified by the county commission to be free from error as determined by the test, is to be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys are the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container is to be opened to conduct the test required to be conducted immediately before the start of the official count.

The test is to be repeated immediately before the start of the official count. The test is to also be conducted at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

All results of all of the tests are to be immediately certified by the county commission and filed in the office of the clerk of the county commission and immediately recorded in the miscellaneous record book. On completion of the count, the program deck, test materials and ballot cards are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock.

The numbers of locks and keys are the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

§3-4A-27. Proceedings at the central counting center.
(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission, and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted, or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose, and two representatives of each political party on the ballot, who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or ballot card or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number, and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies’ duties, the badges or identification cards are to be returned to the county clerk.
(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the secretary of state, subject to the following requirements:

1. In systems using punch card ballots, the ballot cards and secrecy envelopes for a precinct are to be removed from the box and examined for write-in votes before being separated and stacked for delivery to the tabulator. Immediately after valid write-in votes are tallied, the ballot cards are to be delivered to the tabulator. No write-in vote may be counted for an office unless the voter has punched the write-in voting position for that office and entered the name of that office and the name of an official write-in candidate for that office on the inside of the secrecy envelope, either by writing, affixing a sticker or label or placing an ink-stamped impression thereon;

2. In systems using ballots marked with electronically sensible ink, ballots are to be removed from the boxes and stacked for the tabulator, which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has marked the write-in voting position for that office and entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

3. In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the personalized electronic ballots are to be removed from the containers and stacked for the tabulator. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;
(4) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, a single punch or mark, as appropriate for the voting system, in the write-in location for that office is sufficient for all write-in choices.

When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(5) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded;

(6) When a voter casts a straight ticket vote and also punches or marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate: and

(7) Official write-in candidates are those who have filed a write-in candidate’s certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards are to be clearly labeled “duplicate” and are to bear a serial number which is recorded on the damaged or defective ballot card and on the replacement ballot card.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk
of the county commission, to constitute the official preliminary returns of each precinct or election district. Further, all the returns are to be printed on a precinct basis. Periodically throughout and upon completion of the count, the returns are to be open to the public by posting the returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns are to be posted in the same manner.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

(a) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to remain sealed during the canvass of the returns of the election and for a period of seven days thereafter, except that the equipment may be opened for the canvass and it is to be resealed immediately thereafter. During that period any candidate or the local chair of a political party may be permitted to examine any of the materials sealed: Provided, That a notice of the time and place of the examination is to be posted at the central counting center before and on the hour of nine o’clock in the morning on the day the examination is to occur, and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the
canvass and after a seven-day period has expired, the vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to be sealed for one year: Provided, however, That the vote recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed, and any of the electronic voting equipment herein discussed may be released for inspection or review by a request of a circuit court or the supreme court of appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballot labels, ballot cards and the automatic tabulating equipment used in the election and shall determine the number of votes cast for each candidate and for and against each question and by this examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any candidate demands a recount of the votes cast at an election, the ballots and ballot cards are to be reexamined during the recount for the purpose of reascertaining the total number of votes cast for any candidate in the same manner and according to the same rules as are utilized in the original vote count pursuant to section twenty-seven of this article.

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the ballot cards cast therein counted manually. Where electronic voting systems are used that utilize screens upon which votes are recorded by means of a stylus or by means of touch, at least five percent of the precincts are to be chosen at random, upon any requested recount, and the ballot images are to be printed from the internal electronic memory of the voting device and are to be counted manually. The same random selection is also to be counted by the automatic tabulating equipment. If the
variance between the random manual count and the automatic
tabulating equipment count of the same random ballots, is equal
to or greater than one percent, then a manual recount of all
ballot cards is required. In the course of any recount, if a
candidate for an office demands, or if the board of canvassers
elects to recount the votes cast for an office, the votes cast for
that office in any precinct are to be recounted by manual count.

§3-4A-30. Adjustments in voting precincts where electronic
voting system used.

The provisions of section five, article one of this chapter,
relating to the number of registered voters in each precinct,
shall apply to and control in precincts in counties in which
electronic voting systems have been adopted, except that the
maximum number of registered voters shall be one thousand
five hundred per precinct. The county commissions of such
counties, subject to other provisions of this chapter with respect
to the altering or changing of the boundaries of voting pre-
cincts, may change the boundaries of precincts or consolidate
precincts as practicable, to achieve the maximum advantage
from the use of electronic voting systems.

The county commission may, in the urban centers of any
county adopting an electronic voting system, designate a voting
place without the limits of a precinct, provided such voting
place is in a public building, and in an adjoining precinct. In
such event more than one precinct may vote in any such public
building.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-23. Certificate nominations; requirements and control;
penalties.

(a) Groups of citizens having no party organization may
nominate candidates for public office otherwise than by
conventions or primary elections. In such case, the candidate or candidates, jointly or severally, shall file a declaration with the secretary of state if the office is to be filled by the voters of more than one county, or with the clerk of the circuit court of the county if the office is to be filled by the voters of one county or political subdivision thereof; such declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of such declaration each candidate shall pay the filing fee required by law, and if such declaration is not so filed or the filing fee so paid, the certificate shall not be received by the secretary of state, or clerk of the circuit court, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on such certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ............................, ss:

This certifies that ............................, whose post-office address is ............................, is hereby authorized to solicit and canvass duly registered voters residing in ............................ (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ............................ (here place name of candidate heading list on certificate) for the office of ............................ and others, at the general election to be held on ............................, 20......
Given under my hand and the seal of my office this

........................ day of ........................., 20......

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

Clerk, County Commission of ........... County.

The clerk of each county commission, upon proper applica-

ation made as herein provided, shall issue such credentials and

shall keep a record thereof.

(c) The certificate shall be personally signed by duly

registered voters, in their own proper handwriting or by their

marks duly witnessed, who must be residents within the county,

district or other political division represented by the office

sought wherein such canvass or solicitation is made by the

person or persons duly authorized. Such signatures need not all

be on one certificate. The number of such signatures shall be

equal to not less than two percent of the entire vote cast at the

last preceding general election for the office in the state,
district, county or other political division for which the nomina-
tion is to be made, but in no event shall the number be less than
twenty-five. The number of such signatures shall be equal to

not less than two percent of the entire vote cast at the last

preceding general election for any statewide, congressional or

presidential candidate, but in no event shall the number be less

than twenty-five. Where two or more nominations may be made

for the same office, the total of the votes cast at the last

preceding general election for the candidates receiving the

highest number of votes on each ticket for such office shall

constitute the entire vote. No signature on such certificate shall

be counted unless it be that of a duly registered voter of the

county, district or other political division represented by the

office sought wherein such certificate was presented. It shall be

the duty of those soliciting signatures to read to each voter

whose signature is solicited the statement written on the

certificate which gives notice that no person signing such
(d) Such certificates shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers are legally qualified and duly registered as voters and desire to vote for such candidates; and may designate, by not more than five words, a brief name of the party which such candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of such certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The secretary of state shall prescribe the form and content of the nomination certificates to be used for soliciting signatures. The content shall include the language to be used in giving written and oral notice to each voter that signing of the nominating certificate forfeits that voter's right to vote in the corresponding primary election.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

(e) The secretary of state, or the clerk of the circuit court, as the case may be, may investigate the validity of such certificates and the signatures thereon, and if upon such investigation there may be doubt as to the legitimacy and the validity of such certificate, he may request the attorney general of the state, or the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee or nominees by certificate to determine his or their right to such nomination to public office, and upon request being made, the
(f) Any person violating the provisions of this section, in addition to penalties prescribed elsewhere for violation of this chapter, is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than one year, or both, in the discretion of the court: Provided, That no criminal penalty may be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

CHAPTER 118

(Com. Sub. for H. B. 2876 — By Delegates Mahan, Smirl, C. White, Coleman and Craig)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to election officials; allowing a person registered within the county where a municipality lies to serve as an election official in a municipal election; eliminating the eligibility restriction against persons who have served as deputy sheriffs within six months prior to an election; eliminating the requirement that a person be registered as affiliated with the political party which nominates that person as an election official; reducing the number of election officials in a standard receiving
board for municipal elections; and increasing the authorized
maximum amount of compensation for election officials.

Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, twenty-nine, thirty and forty-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.

§3-1-28. Election officials; eligibility, suspension of eligibility.
§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
§3-1-44. Compensation of election officials; expenses.

§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election
official in any state, county or municipal election held in West
Virginia, a person:

(1) Must be a registered voter of the county for elections
held throughout the county, and a registered voter of the
municipality for elections held within the municipality;
Provided, That if the required number of persons eligible to
serve as election officials for a municipal election are not
available or are not willing to serve as election officials for a
municipal election, a registered voter of the county in which the
municipality is located may serve as an election official for
elections held within the municipality.

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot in the election;
(4) May not be the parent, child, sibling or spouse of a candidate on the ballot in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as election official in any election for four years, for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot, or violating the secrecy of the voter’s ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years, upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) of this section: Provided, That the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election.
date. The names of those persons signing the petition must be kept confidential.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term “standard receiving board” means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, then the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box.

(2) The term “expanded receiving board” means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(3) The term “counting board” means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner; and

(4) The term “team of poll clerks” or “team of election commissioners” means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation.

(b) The composition of boards of election officials shall be as follows:
(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board, as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board;

(B) For precincts of five hundred to seven hundred registered voters, one standard receiving board or, at the discretion of the county commission, one expanded receiving board; and

(C) For precincts of more than seven hundred registered voters, one expanded receiving board;

(3) In any election conducted using paper ballots, counting boards may be allowed, disallowed or required as follows:

(A) For any state, county or municipal special election, no counting board may be allowed;

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters, and one counting board may be allowed, at the discretion of the county commission for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body for any precinct of more than two hundred registered voters.

(c) For each primary and general election in the county, the county commission shall designate the number and type of
election boards for the various precincts according to the provisions of this section. At least eighty-four days before each primary and general election, the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee may also nominate as many qualified persons as alternates as there are precincts in the county, to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;
(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on their behalf, shall file in writing with the appointing body, no later than the fifty-sixth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials; or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.
(d) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

1. Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

2. The governing body shall fill any positions for which no nominations were filed.

(e) At the same time as the appointment of election officials, or at a subsequent meeting, the governing body shall appoint persons as alternates. Provided, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official, or is instructed to attend and actually attends training as an alternate and, if called to do so, also serves at the polls on election day. Alternates shall be appointed and serve as follows:

1. Those alternates nominated by the executive committees, shall be appointed;

2. The governing body may appoint additional alternates, who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

3. The governing body may determine the number of persons who may be instructed to attend training as alternates.

(f) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.
(g) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment, and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(h) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(i) If an appointed election official fails to appear at the polling place by forty-five minutes past five o’clock a.m. on election day, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy and the clerk shall proceed as follows:

1. The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person of the same political party as the party that nominated the person originally appointed;

2. If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

3. If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the
person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(j) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, not exceeding one hundred twenty-five dollars for each day he or she serves as ballot commissioner, but, in no case may a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, not exceeding one hundred twenty-five dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day's service during an election and a sum not exceeding one hundred seventy-five dollars for his or her services at any one election: Provided, That each commissioner of election and poll clerk is to be paid a sum not exceeding one hundred seventy-five dollars for his or her services at any of the three special elections described in subsection (e) of this section.

(c) The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning them as provided in articles five and six of this chapter, is to be paid an additional sum, fixed by the county commission, not exceeding one hundred twenty-five dollars for his or her services pursuant to this subsection at any one election and, in addition, is to be paid mileage up to the rate
of reimbursement authorized per mile as set by the travel
management office of the department of administration per mile
necessarily traveled in the performance of his or her services.
The rate paid for mileage pursuant to this section may change
from time to time in accordance with changes in the reimburse-
ment rates established by the travel management office, or its
successor agency.

(d) The compensation of election officers, cost of printing
ballots and all other expenses incurred in holding and making
the return of elections, other than the three special elections
described in subsection (e) of this section, is to be audited by
the county commission and paid out of the county treasury.

(e) The compensation of election officers, cost of printing
ballots and all other reasonable and necessary expenses in
holding and making the return of a special election for the
purpose of taking the sense of the voters on the question of
calling a constitutional convention, of a special election to elect
members of a constitutional convention, and of a special
election to ratify or reject the proposals, acts and ordinances of
a constitutional convention are obligations of the state incurred
by the ballot commissioners, clerks of the circuit courts, clerks
of the county commissions and county commissions of the
various counties as agents of the state, and all expenses of these
special elections are to be audited by the secretary of state. The
secretary of state shall prepare and transmit to the county
commissions forms on which the county commissions shall
certify all expenses of these special elections to the secretary of
state. If satisfied that the expenses as certified by the county
commissions are reasonable and were necessarily incurred, the
secretary of state shall requisition the necessary warrants from
the auditor of the state to be drawn on the state treasurer, and
shall mail the warrants directly to the vendors of the special
election services, supplies and facilities.

CHAPTER 119

(H. B. 3175 — By Mr. Speaker, Mr. Kiss, and Delegates Staton,
Amores, Mahan, Coleman, Craig and C. White)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitations on certain political activity; clarifying prohibition on anonymous publications; including contributions to state party legislative caucus committees within limitations on contributions; making certain technical revisions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, 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 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.
(a) No person may publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, or other publication expressly advocating the election or defeat of a clearly identified candidate.

(b) No owner, publisher, editor or employee of a newspaper or other periodical may insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) No person may, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, no person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material,
supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.

(e) No person may, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) No person may, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide or national elective office, or in excess of the value of one thousand dollars, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any of the offices.

(g)(1) Notwithstanding the provisions of subsection (f) of this section to the contrary, the aggregate contributions made to a state party executive committee or state party legislative caucus committee are to be permitted only pursuant to the limitations imposed by the provisions of this subsection.
(2) No person may, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of one thousand dollars in any calendar year.

(h) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: Provided, That transfers permitted by this subsection may not exceed fifty thousand dollars in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: Provided, however, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(i) No person may solicit any contribution from any nonelective salaried employee of the state government or of any of its subdivisions or coerce or intimidate any nonelective salaried employee into making a contribution. No person may coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily, without coercion, intimidation or solicitation.

(j) No person may solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.
(k) No person may place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term "roadside receptacle" means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(1) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subject to both fine and confinement.

CHAPTER 120

(Com. Sub. for S. B. 204 — By Senators Snyder, Fanning, McCabe, Oliverio, Ross, Deem and Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article five, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said code by adding thereto a new chapter, designated chapter thirty-nine-a; to amend chapter forty-six-a of said code by adding thereto a new article, designated article six-i; and to
amend article eight, chapter fifty-five of said code by adding thereto a new section, designated section fifteen, all relating generally to electronic commerce and the uniform electronic transactions act; defining terms; adopting the uniform electronic transaction act; providing that the act applies to electronic records and electronic signatures relating to transactions covered by the act; creating exemptions; providing that the act does not create or alter substantive law; applying the act upon agreement of the parties to a transaction; providing that parties may vary the effect of the act by agreement; providing that the right not to conduct transactions by electronic means may not be waived; providing for the construction and application of the act; providing that records, signatures and contracts may not be denied legal effect or enforceability solely because they are in electronic form; providing that an electronic record satisfies the legal requirement that a record be in writing; providing that electronic signature satisfies the legal requirement for a signature; recognizing the legal effect of providing or sending information by electronic means; establishing the requirements for providing or sending information by electronic means; providing that when a law, other than this act, contains specific requirements for a record, an electronic record must meet those requirements; providing that an electronic record or signature is attributable to the person creating it; establishing requirements for showing an electronic record or signature was created by a specific person; providing protection for the conforming party against the nonconforming party in the event of a change or error; establishing a procedure for correcting errors; establishing when other law applies when an error or change has occurred; authorizing electronic notarization and acknowledgment; establishing requirements for retention of electronic records as originals; providing that a legal requirement to retain or present a record, including a check, in its original form may be satisfied by an electronic record; providing that an electronic record may satisfy the legal requirements for retaining records for evidentiary, audit or like purposes unless specifically
prohibited by law; providing that an electronic record or signature may not be excluded from evidence solely because it is in electronic form; authorizing formation of contracts through automated transactions; providing that the terms of a contract formed by an automated transaction will be determined by applicable substantive law; establishing the conditions under which an electronic record is considered to have been sent; establishing the conditions under which an electronic record is considered to have been received; providing that an electronic record will be deemed to have been sent from the sender’s place of business; providing that an electronic record will be deemed to have been received at the receiver’s place of business; providing that, where the sender or receiver has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; providing that if the sender or receiver does not have a place of business, the place of business of that person is his or her residence; providing that an electronic record is received even if no individual is aware of its receipt; providing that receipt of an electronic acknowledgment from an information processing system establishes that the record was sent but does not, by itself, establish that the content received is the same as what was sent; establishing the circumstances under which the legal effect of sending or receipt of an electronic record is controlled by other applicable law; providing that parts of this article may not be waived or varied by an agreement between the parties; defining transferrable records for purposes of using electronic means to transfer or maintain such records; establishing the requirements for using electronic means to transfer or maintain transferrable records; providing for the applicability of the uniform commercial code to electronic transferrable records; stating relationship with federal law; requiring information be given to consumer prior to obtaining consent; requiring consumer consent to electronic transactions; providing for withdrawal of consent; requiring consumer be informed when certain changes occur; providing that nothing in
this article affects content or timing of disclosure or other require-
ments under applicable substantive law; providing for effect of
failure to obtain electronic consent or confirmation; providing
that this article does not apply to consumer consent given or
records provided prior to the enactment of this act; providing that
oral communication or recording of an oral communication is not
an electronic record; providing for retention, accuracy and
accessibility of electronic records; providing that requirements for
retaining originals and checks may be met by electronic means;
providing that the legal effect, validity or enforceability of an
electronic record may be denied if the electronic record is not in
a form that can be retained and accurately reproduced; providing
for certain notices that may not be sent in electronic form;
providing for severability; providing for the applicability of the
consumer protection portions of the federal electronic signatures
in global and national commerce act; providing definitions;
establishing the requirements for the acceptance of electronic
signatures by governmental entities; requiring governmental
entities choosing to use electronic signatures to participate in the
secretary of state’s registry and follow the secretary of state’s
rules; authorizing governmental entities to adopt an ordinance,
rule or official policy relating to use of digital signatures;
requiring public notice of a governmental entity’s acceptance of
electronic signatures; authorizing the secretary of state to propose
legislative rules relating to the standards and processes for the use
of electronic signatures by governmental entities; designating the
secretary of state as the certification authority and repository for
certain governmental agencies using electronic signatures;
requiring the secretary of state to regulate electronic transactions
and digital signature verifications; setting forth the powers and
duties of the secretary of state with regard to governmental use of
electronic transactions; providing that no specific form of
technology, process or standard is required by this article;
authorizing the secretary of state to revoke a signature key
believed to be stolen, fraudulently used or otherwise compro-
mised; providing that the secretary of state is not liable for any transaction compromised by an illegal act or inappropriate use of an electronic signature; providing for severability; defining terms; providing for electronic response to electronic notices; explaining when an electronic record is actually received; providing for electronic transferable records; explaining relationship to federal law; providing for waiver; providing for severability; and establishing a choice of law limitation providing that the laws of West Virginia are applicable for any computer information agreements.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that said code be amended by adding thereto a new chapter, designated chapter thirty-nine-a; that chapter forty-six-a of said code be amended by adding thereto a new article, designated article six-i; and that article eight, chapter fifty-five of said code be amended by adding thereto a new section, designated section fifteen, all to read as follows:

Chapter

39A. Electronic Commerce.

46A. West Virginia Consumer Credit and Protection Act.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 39A. ELECTRONIC COMMERCE.

Article


2. Consumer Protections and Responsibilities in Electronic Transactions.

3. Digital Signatures; State Electronic Records and Transactions.

ARTICLE 1. UNIFORM ELECTRONIC TRANSACTIONS ACT.


§39A-1-4.  Prospective application.
§39A-1-5.  Use of electronic records and electronic signatures; variation by agreement.
§39A-1-6.  Construction and application.
§39A-1-10.  Effect of change or error.
§39A-1-17.  Relationship with federal law.


1 This article may be cited as the uniform electronic transactions act.


1 In this chapter:

2 (1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

2 (2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

2 (3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this article and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company,
association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(13) "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.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption or callback or other acknowledgment procedures.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band or Alaskan native village which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.


(a) Except as otherwise provided in subsection (d) of this section, this article applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils or testamentary trusts; and
(2) The Uniform Commercial Code other than sections one hundred seven and two hundred six, article one, chapter forty-six of this code and articles two and two-a of said chapter.

(c) This article applies to an electronic record or electronic signature otherwise excluded from the application of this article under subsection (b) of this article to the extent it is governed by a law other than those specified in said subsection.

(d) A transaction subject to this article is also subject to other applicable substantive law.

§39A-1-4. Prospective application.

This article applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this article.

§39A-1-5. Use of electronic records and electronic signatures; variation by agreement.

(a) This article does not require a record or signature to be created, generated, sent, communicated, received, stored or otherwise processed or used by electronic means or in electronic form.

(b) This article applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.
(d) Except as otherwise provided in this article, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this article of the words “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this article and other applicable law.

§39A-1-6. Construction and application.

This article must be construed and applied:

1. To facilitate electronic transactions consistent with other applicable law;

2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

3. To effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.


(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.
8 (d) If a law requires a signature, an electronic signature satisfies the law.


1 (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

10 (b) If a law other than this article requires a record: (i) To be posted or displayed in a certain manner; (ii) to be sent, communicated or transmitted by a specified method; or (iii) to contain information that is formatted in a certain manner, the following rules apply:

15 (1) The record must be posted or displayed in the manner specified in the other law.

17 (2) Except as otherwise provided in subdivision (2), subsection (d) of this section, the record must be sent, communicated or transmitted by the method specified in the other law.

20 (3) The record must contain the information formatted in the manner specified in the other law.

22 (c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this article requires information to be provided, sent or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this article to send, communicate or transmit a record by first class mail, postage prepaid, regular United States mail, certified mail or registered mail, may be varied by agreement to the extent permitted by the other law.


(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution or adoption, including the parties’ agreement, if any, and otherwise as provided by law.

§39A-1-10. Effect of change or error.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:
(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subdivision (1) nor subdivision (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subdivisions (2) and (3) of this subsection may not be varied by agreement.

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.


(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated or received.

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of said subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the informa-
tion on the front and back of the check in accordance with subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this article specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.


In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.


In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
(3) The terms of the contract are determined by the substantive law applicable to it.


(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place the information processing system is located is different from
the place the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

(a) In this section, "transferable record" means an electronic record that:

1. Would be a note under article three, chapter forty-six of this code or a document under article seven of said chapter if the electronic record were in writing; and

2. The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section and a person is deemed to have control of a transferable record if the transferable record is created, stored and assigned in such a manner that:

1. A single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5) and (6) of this subsection, unalterable;

2. The authoritative copy identifies the person asserting control as:

   (A) The person to which the transferable record was issued; or

   (B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;
(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section two hundred one, article one, chapter forty-six of this code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under said chapter, including, if the applicable statutory requirements under section three hundred two, article three of said chapter, section five hundred one, article seven of said chapter or section three hundred eight, article nine of said chapter are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter forty-six of this code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of
§39A-1-17. Relationship with federal law.

The enactment of this article is an enactment of the Uniform Electronic Transactions Act (UETA) as approved for enactment in all of the states by the national conference of commissioners on uniform state laws in one thousand nine hundred ninety-nine and is an exception to preemption of state law as permitted by section one hundred two of the federal "Electronic Signatures in Global and National Commerce Act", Public Law No. 106-229, 15 U.S.C. 7001.

ARTICLE 2. CONSUMER PROTECTIONS AND RESPONSIBILITIES IN ELECTRONIC TRANSACTIONS.

§39A-2-2. Preservation of consumer protection; verification or acknowledgment.
§39A-2-3. Effect of failure to obtain electronic consent or confirmation.
§39A-2-4. Prospective effect.
§39A-2-5. Prior consent.
§39A-2-7. Retention; accuracy and accessibility.
§39A-2-10. Accuracy and ability to retain contracts and other records.


Notwithstanding the provisions of article one of this chapter, if a statute, regulation or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made
available to a consumer in writing, the use of an electronic record to provide or make available such information satisfies the requirement that such information be in writing if:

1. The consumer has affirmatively consented to such use and has not withdrawn such consent;

2. The consumer, prior to consenting, is provided with a clear and conspicuous statement;

   A. Informing the consumer of: (i) Any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form; and (ii) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences, which may include termination of the parties' relationship, or fees in the event of such withdrawal;

   B. Informing the consumer of whether the consent applies: (i) Only to the particular transaction which gave rise to the obligation to provide the record; or (ii) to identified categories of records that may be provided or made available during the course of the parties' relationship;

   C. Describing the procedures the consumer must use to withdraw consent as provided in paragraph (A) of this section and to update information needed to contact the consumer electronically; and

   D. Informing the consumer: (i) How, after consent, the consumer may, upon request, obtain a paper copy of an electronic record; and (ii) whether any fee will be charged for such copy;

3. The consumer:
(A) Prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(B) Consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(4) After the consent of a consumer in accordance with subdivision (1) of this section, if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record:

(A) Provides the consumer with a statement of: (i) The revised hardware and software requirements for access to and retention of the electronic records; and (ii) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (ii), paragraph (A), subdivision (2) of this subsection; and

(B) Again complies with subdivision (3).

§39A-2-2. Preservation of consumer protection; verification or acknowledgment.

(a) Nothing in this article affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, rule, regulation or other rule of law.
(b) If a law that was enacted prior to this article expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt.

§39A-2-3. Effect of failure to obtain electronic consent or confirmation.

(a) The legal effectiveness, validity or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (B), subdivision (3), section one of this article.

§39A-2-4. Prospective effect.

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity or enforceability of electronic records provided or made available to that consumer in accordance with section one of this article prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with subdivision (4), section one of this article may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this subsection.

§39A-2-5. Prior consent.

This section does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this title to receive such records in electronic form as permitted by any statute, regulation or other rule of law.

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this article except as otherwise provided under applicable law.

§39A-2-7. Retention; accuracy and accessibility.

(a) If a statute, rule, regulation or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that:

(1) Accurately reflects the information set forth in the contract or other record; and

(2) Remains accessible to all persons who are entitled to access by statute, regulations or rule of law, for the period required by such statute, regulation or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing or otherwise.

(b) A requirement to retain a contract or other record in accordance with subsection (a) of this section does not apply to any information whose sole purpose is to enable the contract or other record to be sent, communicated or received.


If a statute, regulation or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available or retained in its original form, or provides consequences if the contract or other record is not provided, available or retained in its original form, that statute, rule, regulation or rule of law is satisfied by an electronic record that complies with section seven of this article.

If a statute, rule, regulation or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with section seven of this article.

§39A-2-10. Accuracy and ability to retain contracts and other records.

If a statute, rule, regulation or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.


The provisions of article one of this chapter do not apply to:

(1) Court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) Any notice of:

(A) The cancellation or termination of utility services (including water, heat and power);

(B) Default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;
(C) The cancellation or termination of health insurance or
benefits or life insurance benefits (excluding annuities); or

(D) Recall of a product, or material failure of a product, that
risks endangering health or safety; or

(3) Any document required to accompany any transporta-
tion or handling of hazardous materials, pesticides or other
toxic or dangerous materials.


If any provision of this article be found by a court of
competent jurisdiction to be unenforceable under the constitu-
tion of this state or the laws and constitutions of the United
States, the remaining provisions of this article shall be sever-
able and shall continue in full force and effect.

ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS
AND TRANSACTIONS.

§39A-3-1. Definitions.

§39A-3-2. Acceptance of electronic signature by governmental entities in satisfac-
tion of signature requirement.

§39A-3-3. Duties of the secretary of state; state agencies use of electronic signatures.

§39A-3-4. Secretary of state; liability.

§39A-3-5. Severability.

§39A-3-1. Definitions.

(1) "Certificate" means a computer-based record that:

(A) Identifies the certification authority issuing it;

(B) Names or identifies its subscriber;

(C) Contains the subscriber’s public key; and
(D) Is digitally signed by the certification authority issuing it.

(2) "Certification authority" means a person who issues a certificate.

(3) "Digital mark" consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

(4) "Digital signature" consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately determine:

(A) Whether the transformed message was created using the private key that corresponds to the signer's public key; and

(B) Whether the initial message has been altered since the message was transformed.


(a) Any governmental entity may, by appropriate official action, authorize the acceptance of electronic signatures in lieu of original signatures on messages or filings requiring one or more original signatures, subject to the requirements and limitations of section three of this article.

(b) Any governmental entity may elect to participate and utilize the secretary of state's digital signature authority and registry. Upon acceptance of and registration with the secretary of state's digital signature authority and registry, the govern-
mental entity’s electronic transactions are bound to the regulation of the authority and registry and those rules promulgated thereunder. Any governmental entity not required to participate, but which elects to participate, may withdraw at any time from the program upon notification of the secretary of state and all others who utilize that entity’s digital signature program.

(c) Any governmental entity may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures are authorized and the type or types of electronic signatures which may be accepted for each type of document. Those governmental entities not subject to the provisions of chapter twenty-nine-a of this code which proposes to authorize the acceptance of electronic signatures on documents filed with that entity shall give public notice of the proposed adoption in a manner prescribed by law, an ordinance, rule or official policy, but in no case for less than thirty days before adoption.

(d) Any governmental entity which intends to extend, modify or revoke the authority to accept electronic signatures shall do so by the same means and with the same notice as required in this section for adoption.

§39A-3-3. Duties of the secretary of state; state agencies use of electronic signatures.

(a) The secretary of state shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. The rules shall include minimum standards for secure transactions to promote confidence and efficiency in legally binding electronic document transactions. The rules may be amended from time to time to keep the rules
current with new developments in technology and improvements in secured transaction processes.

(b) The secretary of state is designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code and shall regulate transactions and digital signature verifications. The secretary may enter into reciprocal agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The secretary of state may propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices as provided for in this article. The secretary of state is further authorized to contract with a private entity to serve as certification authority for the state of West Virginia. This private certification authority may contract with persons to provide certification service. Any contract entered into must require the certification authority to meet the requirements of this article and any rules promulgated by the secretary of state.

(c) Nothing contained in this article may be construed to mandate any specific form of technology, process or standard to be the only technology, process or standard which may be utilized by state entities. Nor may anything contained in this article be construed to limit the secretary of state in adopting by legislative rule, alternative technologies to authorize electronic signatures.

§39A-3-4. Secretary of state; liability.

The secretary of state, serving as authority and repository of signature keys for governmental entities shall revoke any signature key when the secretary has reason to believe that the digital signature key has been stolen, fraudulently used or otherwise compromised. This article creates no liability upon
§39A-3-5. Severability.

If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the constitution of this state or the laws and constitutions of the United States, the remaining provisions of this article shall be severable and shall continue in full force and effect.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 61. CONSUMER PROTECTIONS IN ELECTRONIC TRANSACTIONS.

§46A-6I-1. Definitions.

For purposes of this article, the terms herein have the meaning ascribed in section two, article one, chapter thirty-nine-a of this code.

(b) "Consumer transaction" means a transaction involving an individual with respect to or primarily affecting personal, family, household or agricultural purposes.

§46A-6I-2. Electronic response to electronic notices.
In a consumer transaction, when a consumer is required to provide notice to exercise or preserve the consumer’s rights under any law, the consumer may exercise or preserve that right using the same method by which the consumer was provided with notice of that right.


Notwithstanding the provisions of article one, chapter thirty-nine-a of this code, in a consumer transaction, an electronic record is not sent to or received by a party if the sender has actual knowledge that such party did not actually receive the electronic record. In that case, the sender’s sole obligation shall be to take reasonable steps to attempt redelivery using information in the sender’s files. This redelivery requirement is satisfied if the sender sends the electronic record to a different electronic mail address or to a postal address the sender has on file.

§46A-61-4. Electronic transferable records.

(a) In addition to the provisions of article one, chapter thirty-nine-a of this code, this section applies to transferable records in a consumer transaction.

(b) If payment is made to a person indicated to be in control of a transferable record, as described in section sixteen, article one of this chapter, by a system employed for evidencing the transfer of interest in the transferable records, then the obligor is discharged to the extent of the payment as permitted by article three, chapter forty-six of this code.

§46A-61-5. Relationship with federal and state law.

The requirements of this article are intended to supplement, not to modify, limit, or supersede, the requirements of the federal Electronic Signatures in Global and National Commerce
§46A-6I-6. Waiver.

1 In consumer transactions, the rules and requirements set out in this article may not be changed by agreement of the parties.

§46A-6I-7. Severability.

1 If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the constitution of this state or the laws and constitutions of the United States, the remaining provisions of this article shall be severable and shall continue in full force and effect.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 8. ACTIONS ON CONTRACTS.

§55-8-15. Choice of law for computer information agreements.

1 A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted uniform computer information transactions act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this section, a “computer information agreement” means an agreement that would be governed by the uniform computer transactions act or substantially similar law as enacted in the state specified in the choice
AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time lost as a volunteer fire department member or an emergency medical service attendant; adding additional persons who may provide verification of an employee's response to an emergency call; modifying the definition of "emergency"; clarifying benefits as including seniority; and permitting the emergency medical service attendant to choose whether lost time as an emergency medical service attendant is subtracted from regular pay or accumulated annual leave at the option of the employee.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, 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 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant.
No employer may terminate, or use any disciplinary action against, an employee who is a member of a volunteer fire department or who is an emergency medical service attendant and who, in the line of emergency duty as a volunteer fireman or an emergency medical service attendant, responds to an emergency call prior to the time he or she is due to report for work and which emergency results in a loss of time from his or her employment.

Any time lost from employment as provided in this section may be charged against the employee's regular pay or against the employee's accumulated leave, if any, at the option of the employee.

At the request of an employer, any employee losing time as provided herein shall supply his or her employer with a statement from the chief of the volunteer fire department or the supervisor or other appropriate person in charge of the emergency medical service entity stating that the employee responded to an emergency call and the time thereof.

As used in this section, "emergency" means going to, attending to or coming from: (1) A fire call; (2) a hazardous or toxic materials spill and cleanup; (3) a motor vehicle accident; or (4) any other situation to which his or her fire department or emergency medical service entity has been or later could be dispatched. The term "employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section must reinstate the employee to his or her former position and shall be required to pay the employee all lost wages and benefits, including seniority, for the period between termination and reinstatement. Any action to enforce
the provisions of this section must be commenced within a period of one year after the date of violation and the action must be commenced in the circuit court of the county wherein the place of employment is located.

CHAPTER 122

(Com. Sub. for S. B. 461 — By Senator Chafin)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to local emergency telephone systems; and providing for the establishment of a local policy for the dispatching of emergency towing services under certain situations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-12. Dispatching of towing services for emergency towing of vehicles; exceptions.

(a) Every three years, the county commission of each county or the municipality operating an emergency telephone system or an enhanced emergency telephone system shall, in
consultation with all public safety units, public agencies and all available towing services registered as common carriers pursuant to the provisions of chapter twenty-four-a of this code, establish a policy that provides for the most prompt, fair, equitable and effective response to requests or dispatches for emergency towing services.

(b) For each incident where towing services are required, the public agency procuring towing services shall maintain a public record of the name of the towing service utilized.

CHAPTER 123

(Com. Sub. for H. B. 2218 — By Mr. Speaker, Mr. Kiss and Delegate Trump) [By Request of the Executive]

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; and to amend and reenact sections one, two and six, article one, chapter twenty-two of said code, all relating to redesignating the division of environmental protection; redesignation of division of environmental protection as department of environmental protection; transfer of all agencies and boards previously under bureau of environment to department of environmental protection; and increase of salary of secretary of department of environmental protection.

Be it enacted by the Legislature of West Virginia:
That section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article two of said chapter be amended and reenacted; and that sections one, two and six, article one, chapter twenty-two of said code be amended and reenacted, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

22. Environmental Resources.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

Article

2. Transfer of Agencies and Boards.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(1) There are created, within the executive branch of the state government, the following departments:

1 (a) Department of administration;
2 (1) Department of education and the arts;
3 (2) Department of environmental protection;
4 (3) Department of health and human resources;
5 (4) Department of military affairs and public safety;
6 (5) Department of tax and revenue; and
(7) Department of transportation.

(b) Each department will be headed by a secretary appointed by the governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.
(7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities are grouped under two bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which includes:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health,
safety and training for purposes of administrative support and
liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine
safety and technical review committee provided for in article
six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification
provided for in article seven, chapter twenty-two-a of this code;
and

(iii) Mine inspectors' examining board provided for in
article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in
article two, chapter five-b of this code, which includes:

(i) Economic development authority provided for in article
fifteen, chapter thirty-one of this code; and

(ii) Tourism commission provided for in article two,
chapter five-b of this code and the office of the tourism
commissioner;

(D) Division of natural resources and natural resources
commission provided for in article one, chapter twenty of this
code. The Blennerhassett historical state park provided for in
article eight, chapter twenty-nine of this code is under the
division of natural resources;

(E) Division of forestry provided for in article one-a,
chapter nineteen of this code;

(F) Geological and economic survey provided for in article
two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in
article one, chapter twenty-two-c of this code;
(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code.

(c) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided for in article two, chapter twenty-two-b of this code;

(2) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(3) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;
(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(4) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(5) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau for public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;
(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division provided for in chapter forty-eight of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;
(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans’ affairs and veterans’ council provided for in article one, chapter nine-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and
(8) Division of banking provided for in article two, chapter thirty-one-a of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(i) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.
(j) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments, means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department, and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(l) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four will be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or
§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

1. (1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

2. (2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

3. (3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and conservation of the environment should be made after public participation and public hearings.

4. (4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies.
which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

(5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a department of environmental protection is in the public interest and will promote the general welfare of the state of West Virginia without sacrificing social and economic development. It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to restore, maintain and protect the environment;

(2) To consolidate environmental regulatory programs in a single state agency;

(3) To provide a comprehensive program for the conservation, protection, exploration, development, enjoyment and use of the natural resources of the state of West Virginia;
(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

(6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;

(7) To promote improvements in the quality of the environment through research, evaluation and sharing of information;

(8) To improve the management and effectiveness of state environmental protection programs;

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally; and

(10) To promote pollution prevention by encouraging reduction or elimination of pollutants at the source through process modification, material substitutions, in-process recycling, reduction of raw material use or other source reduction opportunities.
§22-1-2. Definitions.

As used in this article, unless otherwise provided or indicated by the context:

1. “Department” means the department of environmental protection.

2. “Director” means the secretary of the department of environmental protection.

3. “Division” means the department of environmental protection.

4. “Function” includes any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

5. “Office” includes any office, board, agency, unit, organizational entity, or component thereof.

6. “Secretary” means the secretary of the department of environmental protection.

§22-1-6. Secretary of the department of environmental protection.

(a) The secretary is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the secretary shall organize the department into such offices, sections, agencies and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the

*Clerk's Note: This section was also amended by H. B. 2912 (Chapter 262), which passed prior to this act.*
operation of the department and may prescribe their powers and
duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate
supervisory officers or other officers or employees of the
department to substitute for him or her on any board or com-
mission established under this code or to sit in his or her place
in any hearings, appeals, meetings or other activities with such
substitute having the same powers, duties, authority and
responsibility as the secretary. The secretary has the power to
delegate, as he or she considers appropriate, to supervisory
officers or other officers or employees of the department his or
her powers, duties, authority and responsibility relating to
issuing permits, hiring and training inspectors and other
employees of the department, conducting hearings and appeals
and such other duties and functions set forth in this chapter or
elsewhere in this code.

(c) The secretary has responsibility for the conduct of the
intergovernmental relations of the department, including
assuring:

(1) That the department carries out its functions in a manner
which supplements and complements the environmental
policies, programs and procedures of the federal government,
other state governments and other instrumentalities of this state;
and

(2) That appropriate officers and employees of the division
consult with individuals responsible for making policy relating
to environmental issues in the federal government, other state
governments and other instrumentalities of this state concerning
differences over environmental policies, programs and proce-
dures and concerning the impact of statutory law and rules upon
the environment of this state.
(d) In addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "department of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "department of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in property;
(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the secretary;

(6) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the division of natural resources reports and comments concerning the possible certification. The division of natural resources shall direct the reports and comments to the secretary for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the attorney general for legal assistance and representation as provided by law.

(e) The secretary shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor.

(f) At the time of his or her initial appointment, the secretary must be at least thirty years old and must be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy
industry and the conservation and wise use of natural resources.  

The secretary must have at least a bachelor’s degree in a related  
field and at least three years of experience in a position of  
responsible charge in at least one discipline relating to the  
duties and responsibilities for which the secretary will be  
responsible upon assumption of the office. The secretary may  
not be a candidate for or hold any other public office, may not  
be a member of any political party committee and shall imme-  
diately forfeit and vacate his or her office as secretary in the  
event he or she becomes a candidate for or accepts appointment  
to any other public office or political party committee.  

(g) The secretary will receive an annual salary of eighty-  
five thousand dollars and will be allowed and paid necessary  
expenses incident to the performance of his or her official  
duties. Prior to the assumption of the duties of his or her office,  
the secretary shall take and subscribe to the oath required of  
public officers prescribed by section five, article IV of the  
constitution of West Virginia and shall execute a bond, with  
surety approved by the governor, in the penal sum of ten  
thousand dollars, which executed oath and bond will be filed in  
the office of the secretary of state. Premiums on the bond will  
be paid from the department funds.

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CHAPTER 124

(H. B. 3240 — By Delegates Mahan, Manuel, Amores,  
Wills, Smirl, Givens and Hrutkay)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven, 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 seven-b; and
to amend and reenact section four, article three, chapter twenty-two-b of said code, all relating to moving rule-making authority for the antidegradation implementation procedures from the environmental quality board to the director of the bureau of environment; and granting emergency and legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That article eleven, 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 seven-b; and that section four, article three, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

Chapter
22. Environmental Resources.
22B. Environmental Boards.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Implementation of antidegradation procedures.

(a) The director of the bureau of the environment shall establish the antidegradation implementation procedures as required by 40 C.F.R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The director shall propose for legislative approval pursuant to article three, chapter twenty-nine-a of the code, emergency and legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection "tier" assigned to the applicable water body segment, the nature of the activity, and the extent to which existing water quality would be degraded.
(b) The legislative rule filed by the environmental quality board as 46 CSR 1 in the state register on the first day of September, two thousand, authorized under the authority of section four, article three, chapter twenty-two-b, of this code, as amended by the Legislature during the two thousand one legislative session, establishes standards of water quality for waters of the state. Appendices F, F-1, F-2 and F-3 of the rule contain the antidegradation implementation procedures for the state. The authority and responsibility to develop and implement antidegradation procedures for West Virginia is effective the first day of July, two thousand one, transferred from the environmental quality board to the director. The provisions of Appendices F, F-1, F-2 and F-3 shall remain in full force and effect as if promulgated by the director until such time as the director files the rules authorized herein. The initial rule filed by the director shall contain the same provisions as Appendices F, F-1, F-2 and F-3, 46 CSR 1 approved by the Legislature during the two thousand one regular session. Notwithstanding any provision of the code to the contrary, the initial rule filed by the director shall be effective from filing.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-4. Environmental quality board rule-making authority.

(a) In order to carry out the purposes of this chapter and chapter twenty-two of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof: Provided, That the director of the bureau of environment shall establish the
antidegradation implementation procedures which apply to regulated activities that have the potential to affect water quality, pursuant to section seven-b, article eleven of chapter twenty two of this code.

(b) Except for the alternate procedures provided for in subsection (c) of this section, the board shall promulgate legislative rules setting water quality standards in accordance with the provisions of article three, chapter twenty-nine-a of this code and the declaration of policy set forth in section two, article eleven, chapter twenty-two of this code.

(c) The board may grant site specific variance only for remined areas of coal remining operation from the standards of water quality set forth in legislative rule 46-CSR-1, et seq., setting standards for iron manganese and pH prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the division of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. The standards established in the variance will exist for the term of the NPDES permit. The board will promulgate procedural rules on granting site specific coal remining variances in accordance with the provisions of article three, chapter twenty-nine-a of this code on or before the first day of July, one thousand nine hundred ninety-five. At a minimum, the procedures for granting or denying a remining variance will include the following: A description of the data and information to be submitted to the board by the applicant for such variance; the criteria to be employed by the board in its decision; and provisions for a public comment period and public hearing prior to the board’s decision. The board may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment which requirement will be included as a permit condition. The board may not grant a
45 variance without a demonstration by the applicant that the coal
remining operation will result in the potential for improved
47 instream water quality as a result of the remining operation. The
48 board may not grant a variance where the board determines that
49 degradation of the instream water quality will result from the
50 remining operation.

51 (d) No rule of the board may specify the design of equip-
52 ment, type of construction or particular method which a person
53 shall use to reduce the discharge of a pollutant.

CHAPTER 125

(Com. Sub. for H. B. 2768 — By Mr. Speaker,
Mr. Kiss, and Delegates Staton and Keener)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and thirty-five, article
eleven, chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to amend and reenact
section eighteen, article one, chapter thirty-six of said code; to
amend and reenact section three, article six, chapter forty-two of
said code; to amend article one, chapter forty-four of said code,
by adding thereto a new section, designated section thirteen-a; to
amend and reenact section fourteen, article one of said chapter; to
amend and reenact sections one and twenty-nine, article two of
said chapter; and to amend and reenact section four-a, article
three-a of said chapter, all relating to the administration of estates
and trusts; providing for certain nonprobate inventories of estates
and penalties for noncompliance; providing for the privacy of
certain information from the public; providing for the administra-
tion of certain debts of beneficiaries and spendthrift trusts; providing for the timing of disclaimers and delivery; providing for the certain appraisal of real estate and personal property; providing for certain proceedings and references of decedents' estates; setting forth certain requirements for waiver of a final settlement; and providing for certain optional procedures for short form settlements against estates of decedents.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.
36. Estates and Property.
42. Descent and Distribution.
44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.
§11-11-35. Privacy of information.

§11-11-7. Nonprobate inventory of estates; penalties.
(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the tax commissioner, all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its fair market value on the date of the decedent’s death. The nonprobate personal property to be included on the nonprobate inventory form includes, but is not limited to, the following:

(1) Personalty held as joint tenants with right of survivorship with one or more third parties;

(2) Personalty payable on the death of the decedent to one or more third parties;

(3) Personalty held by the decedent as a life tenant;

(4) Insurance on the decedent’s life payable to beneficiaries other than the executor or administrator of the decedent’s estate;

(5) Powers of appointment;

(6) Annuities;

(7) Transfers during the decedent’s life in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent;

(8) Revocable transfers in trust or otherwise;

(9) Taxable gifts under section 2503 of the United States Internal Revenue Code of 1986; and
(10) All other nonprobate personalty included in the federal gross estate of the decedent.

(b) For purposes of this section, "nonprobate personal property" means all property which does not pass by operation of the decedent's will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent's estate at common law.

(c) The personal representative shall prepare the nonprobate inventory form and file it with the tax commissioner within ninety days of the date of qualification of the personal representative in this state.

(d) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

§11-11-35. Privacy of information.

(a) Notwithstanding the provisions of article ten of this chapter, the tax return of an estate shall be open to inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, or beneficiary under the will of the decedent; or

(3) The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in subdivision (1) or (2) of this section.

(b) Notwithstanding the provisions of article ten of this chapter, the personal representative of the decedent shall make
the nonprobate inventory form of an estate available for
inspection by or disclosure to:

(1) The personal representative of the estate;

(2) Any heir at law, beneficiary under the will of the
decedent, a creditor who has timely filed a claim against the
estate of the decedent with the fiduciary commissioner or
fiduciary supervisor, or any party who has filed a civil action in
any court of competent jurisdiction in which any asset of the
decedent is in issue; or

(3) The attorney for the estate or its personal representative
or the attorney-in-fact duly authorized by any of the persons
described in subdivision (1) or (2) of this subsection.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-18. Trust estates; debts of beneficiaries; spendthrift trusts;
nonmerger of trusts.

(a) Estates held in trust are subject to the debts of the
beneficiary of the trust, except where the creator has expressly
provided in the trust instrument that:

(1) The income or principal, or both, may only be applied
to the health, education, support or maintenance of a benefi-
ciary, other than the creator of the trust, for the life of the
beneficiary; and

(2) The trust is not subject to the liability of or alienation by
the beneficiary or beneficiaries.

(b) A trust, whenever created, may not be set aside or
terminated solely on the assertion of a creditor that the trustee
or trustees are the same person or persons as the beneficiary or
beneficiaries of the trust.

(c) This section applies to any trust established by an
instrument executed on or after the first day of July, two
thousand one, except as otherwise expressly provided in the
terms of the trust.

(d) This section applies to any trust established under an
instrument executed prior to the first day of July, two thousand
one, when the trustee elects, in his or her sole discretion, to
administer the trust pursuant to the provisions of this section.

(e) Except as provided in subsection (c) of this section, this
section may not be construed to create or imply a duty on a
trustee to administer the trust pursuant to the provisions of this
section, and a trustee may not be held liable for refusing to
administer a trust pursuant to the provisions of this section.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 6. UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT.

§42-6-3. Time of disclaimer; delivery.

(a) Except as provided in subsection (c) of this section, if
the property or interest has devolved to the disclaimant under
a testamentary instrument or by the laws of intestacy, the
disclaimer shall be delivered, as to a present interest, not later
than nine months after the death of the deceased owner or
deceased donee of a power of appointment and, as to a future
interest, not later than nine months after the event determining
that the taker of the property or interest has become finally
ascertained and his or her interest is indefeasibly vested. The
disclaimer shall be delivered in person or mailed by registered
or certified mail to any personal representative, or other
fiduciary, of the decedent or the donee of the power, to the
holder of the legal title to which the interest relates or to the
person entitled to the property or interest in the event of
disclaimer. A fully executed and acknowledged copy of the
disclaimer shall be filed and recorded with the probate docu-
ments in the office of the clerk of the county commission of the
county in which proceedings for the administration of the estate
of the deceased owner or deceased donee of the power have
been commenced.

(b) Except as provided in subsection (c), if the property or
interest has devolved to the disclaimant under a
nontestamentary instrument or contract, the disclaimer shall be
delivered as to a present interest, not later than nine months
after the effective date of the nontestamentary instrument or
contract and, as to a future interest, not later than nine months
after the event determining that the taker of the property or
interest has become finally ascertained and his or her interest
indefeasibly vested. If the person entitled to disclaim does not
have actual knowledge of the existence of the interest, the
disclaimer shall be delivered not later than nine months after he
or she has actual knowledge of the existence of the interest. The
effective date of a revocable instrument or contract is the date
on which the maker no longer has power to revoke it or to
transfer to himself or herself or another the entire legal and
equitable ownership of the interest. The disclaimer shall be
delivered in person or mailed by registered or certified mail to
the person who has legal title to or possession of the interest
disclaimed.

(c) In any case, as to a transfer creating an interest in the
disclaimant made after the thirty-first day of December, one
thousand nine hundred seventy-six, and subject to tax under
chapters eleven, twelve or thirteen of the Internal Revenue
Code of 1954, as amended, a disclaimer intended as a qualified
disclaimer thereunder must specifically so state and must be
delivered not later than nine months after the later of the date
the transfer is made or the day on which the person disclaiming
attains age twenty-one.

(d) A surviving joint tenant may disclaim as a separate
interest any property or interest therein devolving to him or her
by right of survivorship. A surviving joint tenant may disclaim
the entire interest in any property or interest therein that is the
subject of a joint tenancy devolving to him or her, if the joint
tenancy was created by act of a deceased joint tenant and the
survivor did not join in creating the joint tenancy.

(e) If real property or an interest therein is disclaimed, in
addition to recording the disclaimer in the county wherein
administration is had or commenced, a fully executed and
acknowledged copy of the disclaimer shall be recorded in the
deed books in the office of the clerk of the county commission
of the county in which the property or interest disclaimed is
located.

CHAPTER 44. ADMINISTRATION OF
ESTATES AND TRUSTS.

Article
1. Personal Representatives.
2. Proof and Allowance of Claims Against the Estate of Decedents.
3A. Optional Procedure for Proof and Allowance of Claims Against Estates
of Decedents; County Option.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-13a. Filing of objections and claims; notice of administration; liability of
personal representative.
§44-1-14. Appraision of real estate and probate personal property of decedents;
disposition; and hiring of experts.

§44-1-13a. Filing of objections and claims; notice of administra-
tion; liability of personal representative.
(a) Any person interested in the estate of a deceased person may file a claim against the estate of the decedent as provided in article two of this chapter.

(b) Any person interested in the estate who objects to the validity of the will, the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (c) of this section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(c) Within thirty days of the filing of the administration of any estate, the clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which shall include:

1. The name of the decedent;
2. The file number of the estate, if any;
3. The name and address of the county commission before whom the proceedings are pending;
4. The name and address of the personal representative;
5. The name and address of any attorney representing the personal representative;
6. The name and address of the fiduciary commissioner, if any;
7. The date of first publication;
8. A statement that claims against the estate must be filed in accordance with the provisions of article two of this chapter; and
(9) A statement that an interested person objecting to the validity of the will, the qualifications of the personal representative or the venue or jurisdiction of the court, shall be filed with the county commission within ninety days after the date of the first publication or within thirty days of service of the notice, whichever is later.

(d) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(e) The personal representative shall, within ninety days after the date of first publication, serve a copy of the notice by first class mail, postage prepaid, as required in subsection (c) of this section, on the following persons:

(1) The decedent's surviving spouse, if any;

(2) Any beneficiaries;

(3) The trustee of any trust in which the decedent was a grantor, if any; and

(4) All creditors identified under subsection (d) above, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(f) The service of the notice required by subdivision (4), subsection (e) of this section may not be construed to admit the validity or enforceability of a claim.

(g) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable.
(h) The clerk of the county commission shall collect a fee of ten dollars for the publication of the notice required in this section.

§44-1-14. Appraisement of real estate and probate personal property of decedents; disposition; and hiring of experts.

(a) The personal representative of an estate of a deceased person shall appraise the deceased’s real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b)(1) After having taken the appropriate oath, the personal representative shall, on a form prescribed by the tax commissioner list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent’s death:

(A) All real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(B) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent’s estate and all other items of probate personal property.

(2) Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such realty for purposes of real property ad valorem taxation.
(3) For purposes of this section, the term "probate personal property" means all property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.

(4) In addition, the personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the tax commissioner for the purpose of reporting to the tax commissioner whether the estate of the decedent is subject to estate tax as provided in article eleven, chapter eleven of this code and whether the decedent owned or had an interest in any nonprobate personal property.

(5) The appraisement and questionnaire shall be executed and signed by the personal representative. The original appraisement and questionnaire and two copies thereof shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement and questionnaire to determine whether the documents are in proper form. If the appraisement and questionnaire are returned to a fiduciary supervisor within ten days after being received and approved by him or her, the supervisor shall deliver the documents to the clerk of the county commission. Upon receipt of the appraisement and questionnaire, the clerk of the county commission shall record the documents, with the certificate of approval of the supervisor, mail a certified copy of the documents to the tax commissioner, and mail a copy of the documents to every known heir or beneficiary of the estate of the decedent. The clerk of the county commission may charge an appropriate mailing fee for mailing the documents. The date of return of an appraisement shall be entered by the clerk of the county commission in his or her record of fiduciaries.
(c) An appraisement is prima facie evidence of:

(1) The value of the property listed;

(2) The property is subject to administration; and

(3) The property was received by the personal representative.

(d) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

(e) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so retained shall be compensated a reasonable sum by the personal representative from the assets of the estate. The compensation and the reasonableness thereof is subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

(f) Except as specifically provided in paragraph (A), subdivision (1), subsection (b) of this section and in section seven, article eleven, chapter eleven of this code, the personal representative is not required to list and appraise nonprobate real estate or nonprobate personal property of the decedent on the forms required in this section or section seven-a, article eleven, chapter eleven of this code.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST THE ESTATE OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.
§44-2-29. Waiver of final settlement.
§44-2-1. Reference of decedents’ estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent shall, by order of the county commission, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary for the settlement of the estate: Provided, That in counties where there are two or more commissioners, the estates of decedents shall be referred to the commissioners in rotation, so there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating issues or problems attendant to such settlement substantiate the allowance of a greater fee.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be one hundred thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, the clerk shall record the appraisement and publish a notice once a week for two successive weeks in a newspaper of general circulation within the county of administration of the estate, substantially as follows:

NOTICE TO CREDITORS AND BENEFICIARIES

“Notice is hereby given that settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first
publication of this notice such reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner.

Dated this ___ day of ____________________________.

______________________________
Clerk of the County Commission of
___________ County, West Virginia.”

The clerk may charge the personal representative a reasonable cost for publication of the notice. If an unpaid creditor files a claim against the estate, the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner. If the personal representative approves all claims as filed, then no reference may be made.

The personal representative shall, within a reasonable time after the date of recordation of the appraisement: (i) File a waiver of final settlement in accordance with the provisions of section twenty-nine of this article; or (ii) make a report to the clerk of his or her receipts, disbursements and distribution and submit an affidavit stating that all claims against the estate for expenses of administration, taxes and debts of the decedent have been paid in full. Upon receipt of the waiver of final settlement or report, the clerk shall record the waiver or report and mail copies to each beneficiary and creditor of by first class mail, postage prepaid. The clerk shall retain the report for ten days to allow any beneficiary or creditor to appear before the county commission to request reference to a fiduciary commissioner. The clerk shall collect a fee of ten dollars for recording and mailing the waiver of final settlement or report.
If no request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative the personal representative and his or her surety shall be discharged; but if such objection or request is made, the county commission may confirm and record the accounting or may refer the estate to its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

§44-2-29. Waiver of final settlement.

In all estates of decedents subject to administration under this article where a release of lien, if required by the provisions of article eleven, chapter eleven of this code, has been filed with the clerk and more than ninety days have elapsed since the filing of any notice required by the provisions of this article, even though such estate may have been referred to a fiduciary commissioner, a final settlement may be waived by a waiver containing an affidavit made by the personal representative, that the time for filing of claims has expired, that no known and unpaid claims exist against the estate, and that all beneficiaries have each been advised of the share or shares to which each is entitled from the estate. Each beneficiary shall sign the waiver unless the beneficiary receives a bequest of tangible personal property or a bequest of cash.

In the case of a deceased beneficiary or a beneficiary under a disability, the duly qualified fiduciary or agent of such beneficiary may sign in lieu of such beneficiary. A fiduciary or agent signing such waiver shall be responsible to the beneficiary for any loss resulting from such waiver.
The waiver shall be recorded as in the case of and in lieu of a settlement as provided in section one, article two of this chapter.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the provisions of this article where more than ninety days has elapsed since the filing of any notice required by section four, an estate may be closed by a short form settlement filed in compliance with this section: Provided, That any lien for payment of estate taxes under article eleven, chapter eleven of this code is released and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement which shall contain an affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate and showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary: Provided, That a beneficiary receiving a bequest of tangible personal property or a bequest of cash may not be required to sign the waiver.

(c) Such waiver may be signed in the case of a distributee or beneficiary under a disability by the duly qualified personal representative of such distributee or beneficiary. A personal representative signing such waiver shall be responsible to his or her cestui que trust for any loss resulting from such waiver.
(d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver, both shall be recorded as in the case of and in lieu of settlement. If the fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing of such settlement give the fiduciary notice as in the case of any other incorrect settlement.

(e) If the short form settlement is proper the fiduciary supervisor shall proceed as in the case of any other settlement.

CHAPTER 126

(S. B. 546 — By Senator Wooton)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring claims against estates of decedents to be verified by affidavits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-5. Claims to be proved by vouchers and affidavits in first instance.
Every claim against the estate of a decedent shall be itemized, verified by affidavit, accompanied by proper vouchers and shall state the character of the claim, whether open account, note, bond, bill, writing obligatory, judgment, decrec or other evidence of debt and the amount thereof and from what date and on what items interest runs and at what percent per annum and stating further that the claim is just and true and that the creditor, or any prior owner of the claim, if there was one, has not received any part of the money stated to be due or any security or satisfaction for the same, except what is credited. The voucher for a judgment or decree shall be an abstract thereof; for a specialty, bond, note, bill of exchange, writing obligatory or other instrument, shall be the instrument itself, or a true copy thereof, or proof of the same in case the instrument be lost; and for an open account, an itemized copy of the account. This section does not apply to taxes.

CHAPTER 127

(H. B. 2482 — By Mr. Speaker, Mr. Kiss (By Request)

[Passed March 28, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the distribution of assets in satisfaction of pecuniary bequests or transfers in trust of a pecuniary amount or formula; authorizing fiduciaries to enter into certain agreements; validating certain agreements; and providing for discretionary division of trusts for tax administrative or other purposes.

Be it enacted by the Legislature of West Virginia:
That section twelve, article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-12. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument shall otherwise expressly provide, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and in the case of any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula if the pecuniary bequest or separate trust is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator’s or grantor’s death, the fiduciary shall allocate to the bequest or trust a prorata share of the income earned by the estate of the testator or grantor or such other fund from which the bequest or trust is to be funded between the date of death of the testator or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will, trust or other governing instrument is required to satisfy a pecuniary bequest or transfer in trust and is authorized to satisfy the bequest or transfer by selection and distribution of assets in kind, and the will, trust or other governing instrument further provides that the assets to be so distributed shall or may be valued by some standard other than their fair market value on the date of distribution, the fiduciary, unless the will, trust or
other governing instrument otherwise specifically directs, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer. This section shall not apply to prevent a fiduciary from carrying into effect the provisions of the will, trust or other governing instrument that the fiduciary, in order to implement such a bequest or transfer, must distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of the pecuniary bequest or transfer as finally determined for federal estate tax purposes.

(c) (1) Any fiduciary having discretionary powers under a will or other governing instrument with respect to the selection of assets to be distributed in satisfaction of a pecuniary bequest or transfer in trust shall be authorized to enter into agreements with the commissioner of internal revenue of the United States of America and other taxing authorities requiring the fiduciary to exercise the fiduciary's discretion so that cash and other properties distributed in satisfaction of the bequest or transfer in trust will be fairly representative of the appreciation or depreciation in value of all property then available for distribution in satisfaction of the bequest or transfer in trust and any such agreement heretofore entered into after April one, one thousand nine hundred sixty-four, is hereby validated. The fiduciary shall be authorized to enter into any other agreement not in conflict with the express terms of the will, trust or other governing instrument that may be necessary or advisable in order to secure for federal estate tax purposes the appropriate marital deduction or other deduction or exemption available under the internal revenue laws of the United States of America, and to do and perform all acts incident to such purpose.

(2) Unless ordered by a court of competent jurisdiction, the bank or trust company operating a common trust fund, as provided for in section six of this article, shall not be required to render an accounting with regard to the fund, before any fiduciary commissioner but it may, by application to the circuit
court of the county in which is located the principal place of
business of said bank or trust company, secure the approval of
an accounting in such condition as the court may fix: Provided,
That nothing herein shall be interpreted as relieving any
fiduciary acquiring, holding or disposing of an interest in any
common trust fund from making an accounting as required by
law with respect of the interest.

(d) The fiduciary of any trust created by will, trust or other
governing instrument shall have discretionary power from time
to time without need of court approval to divide the trust or
trusts for purposes of the generation skipping transfer tax
(“GST”) of section 2601 of the Internal Revenue Code of 1986,
as amended, or any similar or successor law of like import, or
for any other tax, administrative or other purposes. In exercis-
ing this authority for inclusion ratio, marital deduction election,
reverse qualified terminal interest property election or other
GST or other tax purposes, the power shall be exercised in a
manner that complies with applicable internal revenue code
treasury regulations or other requirements for accomplishing
the intended purposes. In the event that division is made for
purposes of separating assets with respect to which the federal
estate tax marital deduction election is to be made from those
as to which such election is not to be made, the division shall be
done on a fractional or percentage basis and the assets of the
trust or other fund to be divided shall be valued for purposes of
the division on the date or dates of division.
AN ACT to amend article ten, chapter forty-four 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 settlement of derivative parental claims for damages they personally have arising out of injury to their child or children; providing authority to settle derivative claims including the costs of medical care and other necessary expenses; providing that settlement of the derivative claim does not limit the right to seek damages on behalf of a minor child; requiring that a release of derivative claims be in writing; providing that a parent or guardian may revive a derivative claim previously settled with the repayment of consideration plus legal interest; and continuing current limitation period for bringing an action on behalf of a minor child.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-16. Settlement of derivative claims.

(a) Nothing contained in this article may limit the derivative rights of a parent or guardian to compromise and settle any claim they may personally have for damages arising out of injury to their minor child or ward for whom they are responsible. This authority to compromise and settle derivative claims includes, without limitation, the authority to compromise and settle claims for the costs of medical or other care for the child or ward attributable to the bodily injury.
(b) The separate settlement of a derivative claim by a parent or guardian does not limit any person, including the parent or guardian, from seeking damages for the minor child or ward.

c) Any release or waiver of a right to bring a legal action to assert a derivative claim, made and executed prior to the commencement of a civil action, shall be in writing and shall be binding against the person who accepts valuable consideration in exchange for the release or waiver of right to bring the legal action: Provided, That in the event a parent or guardian fully repays the consideration received in exchange for a release or waiver of a right to bring a derivative claim or action to the appropriate entity within ninety days after the commencement of a civil action brought on behalf of the child or ward who was injured, the parent or guardian may fully assert the derivative claim in conjunction with the child or ward’s claim: Provided, however, That if more than a year has elapsed since the payment of the consideration, full repayment shall include, in addition to the principal sum paid, legal interest on the principal sum calculated in accordance with section thirty-one, article six, chapter fifty-six of this code.

d) Nothing contained in this section may be construed to reduce the limitation period for filing any civil action for damages arising out of the bodily injury of a minor child.

CHAPTER 129

(Com. Sub. for S. B. 263 — By Senators Anderson, Ross and Caldwell)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to repeal sections three, five, six and seven, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, eight, nine and ten of said article; and to further amend said article by adding thereto a new section, designated section eleven, all relating to rewriting and updating the law on state aid for fairs and festivals; and authorizing the commissioner of agriculture to make the determination of eligibility to receive these funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. STATE AID FOR FAIRS AND FESTIVALS.

§19-7-1. Amount of state aid for fairs and festivals.

§19-7-2. State aid where more than one fair, festival or event in county.

§19-7-4. When fairs, festivals and events are entitled to state aid.

§19-7-8. Gambling devices and immoral shows prohibited; forfeiture of right to state aid; horse racing exempted.

§19-7-9. State fair of West Virginia; ex officio members of board of directors; appropriations; authority to propose rules.

§19-7-10. Appropriations specifically made available for designated exhibitions.

§19-7-11. Determination of eligibility; legislative rules.

§19-7-1. Amount of state aid for fairs and festivals.

1 For the purpose of encouraging agriculture, any agricultural or industrial association, organization or individual conforming to the requirements of this article and the rules promulgated pursuant to this article may receive from the state of West Virginia an amount not to exceed twenty thousand dollars.
§19-7-2. State aid where more than one fair, festival or event in county.

When more than one association, organization or individual holding a fair, festival or event in a county is eligible to receive the benefits pursuant to this article, the county associations, organizations or individuals are eligible to receive from the state a sum not exceeding in the aggregate fifty thousand dollars to be apportioned among the associations, organizations or individuals.

§19-7-4. When fairs, festivals and events are entitled to state aid.

(a) Associations, organizations or individuals purchasing or leasing the grounds and buildings of an agricultural or industrial association, organization or individual entitled to the benefits of this article are also entitled to the benefits set forth in this article.

(b) Other agricultural and industrial associations not entitled to aid under the provisions of this article may receive aid from the state of West Virginia, if funds are available, when, in the judgment of the commissioner of agriculture, the exhibitions are in the interest of the agricultural or the industrial development of the state.

(c) The commissioner of agriculture may assist in the promotion and operation of an annual state fair and 4-H regional fairs and, when funds are available, to expend those funds for their support and development.

§19-7-8. Gambling devices and immoral shows prohibited; forfeiture of right to state aid; horse racing exempted.

No association, organization or individual which is the recipient of state aid under this article may operate or permit to
be operated in conjunction with the fair, festival or event any
gambling device or any indecent or immoral show. Any
association, organization or individual violating the provisions
of this section shall forfeit all eligibility for state aid for a
period of three years. This section, however, may not be
construed to prevent horse racing or horse shows at any fair
receiving state aid.

§19-7-9. State fair of West Virginia; ex officio members of board
of directors; appropriations; authority to propose
rules.

(a) The corporation formerly known as “Greenbrier Valley
fair” is designated “the state fair of West Virginia”; with the
exclusive right to the use of that designation.

(b) The governor and commissioner of agriculture are ex
officio members of the board of directors of the fair association
for the purpose of protecting the interests of the state in the
awarding of premiums and in the arrangement of the agriculture
and other exhibits.

(c) The provisions of this section may not alter, change or
alienate the rights of any other association, organization or
individual entitled to benefits under the provisions of this
article, except as to the use of the name designated in subsec-
section (a) of this section.

(d) For the purpose of encouraging agriculture and industry,
the state fair of West Virginia is not limited to the appropria-
tions authorized by section one of this article. Nothing con-
tained in this article may be construed or interpreted to prevent
the state fair of West Virginia from receiving the benefit of any
sum specifically appropriated for its use by the Legislature to
pay awards and exhibition expenses.
§ 19-7-10. Appropriations specifically made available for designated exhibitions.

For the purpose of encouraging agriculture, forestry and industries related thereto and the development and progress of the state, and when appropriations are specifically set out in the budget bill by the Legislature for any state, county or local exhibition or community development, when the exhibition or community development is held in the interest of the public and substantially supported financially by an association or corporation not operated for profit, the commissioner of agriculture may expend any moneys for those purposes and nothing contained in this article may be construed or interpreted to prevent the commissioner from paying awards to exhibitors and expenses in connection with the operation of the exhibition.

The commissioner of agriculture may pay premiums, awards and provide monetary assistance to the exhibitors at county, community and state fairs, festivals or events of any agricultural or horticultural products when appropriations are specifically made available for specific events or organizations.

§ 19-7-11. Determination of eligibility; legislative rules.

(a) The commissioner shall administer the provisions of this article and shall determine the eligibility of an association, organization or individual to receive state aid described in this article in accordance with the provisions of subsection (b) of this section.

(b) The commissioner of agriculture shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code. The rules shall provide for the administration of the provisions of this article and shall provide criteria under which the commissioner is to determine the eligibility of an association, organization or
AN ACT to amend and reenact section five-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state building code; providing counties and cities the option to apply building code prospectively only; authorizing fire commission to promulgate rules to establish standards and fees; and permitting commissioner to create advisory boards.

Be it enacted by the Legislature of West Virginia:

That section five-b, 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.

*§29-3-5b. Promulgation of rules and statewide building code.

(a) The state fire commission shall propose rules for legislative approval in accordance with the provisions of article

*Clerk’s Note: This section was also amended by S. B. 428 (Chapter 76), which passed prior to this act.
three, chapter twenty-nine-a of this code to safeguard life and
property and to ensure the quality of construction of all struc-
tures erected or renovated throughout this state through the
adoption of a state building code. The rules shall be in accor-
dance with standard safe practices so embodied in widely
recognized standards of good practice for building construction
and all aspects related thereto and have force and effect in those
counties and municipalities adopting the state building code:
*Provided,* That each county or municipality may adopt the code
to the extent that it is only prospective and not retroactive in its
application.

(b) The state fire commission has authority to propose rules
for legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code, regarding
building construction, renovation and all other aspects as
related to the construction and mechanical operations of a
structure. The rules shall be known as the “State Building
Code”.

(c) The state fire commission has authority to propose rules
for legislative approval, in accordance with the provisions of
article three, chapter twenty-nine-a, establishing state standards
and fee schedules for the licensing, registration, certification,
regulation and continuing education of persons which will
conduct inspections relating to the state building code, which
include, but are not limited to, building code officials, inspec-
tors, plans examiners and home inspectors.

(d) The state fire commission has authority to establish
advisory boards as it deems appropriate to encourage represen-
tative participation in subsequent rulemaking from groups or
individuals with an interest in any aspect of the state building
code or related construction or renovation practices.
(e) For the purpose of this section, the term “building code” is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state building code, the provisions of the state law, county or municipal ordinance or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state building code by officials of the state, counties, municipalities and political subdivisions of the state.

(f) Enforcement of the provisions of the state building code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: Provided, That any county or municipality may adopt the state building code with or without adopting the BOCA national property maintenance code.

(g) After the state fire commission has promulgated rules as provided in this section, each county or municipality intending to adopt the state building code shall notify the state fire commission of its intent.

(h) The state fire commission may conduct public meetings in each county or municipality adopting the state building code to explain the provisions of the rules.

(i) The provisions of the state building code relating to the construction, repair, alteration, restoration and movement of
structures are not mandatory for existing buildings and structures identified and classified by the state register of historic places under the provisions of section eight, article one of this chapter or the national register of historic places, pursuant to Title XVI, section 470a of the United States Code. Prior to renovations regarding the application of the state building code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the division of culture and history, state historic preservation office. The final decision is vested in the state fire commission. Additions constructed on a historic building are not excluded from complying with the state building code.

CHAPTER 131

(H. B. 2515 — By Delegates Michael, Mezzatesta, Stemple and Williams)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state fire marshal; repealing fees for reporting fires to the state fire marshal.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to allowance fee for reporting fires.

That section twenty, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
CHAPTER 132

(Com. Sub. for S. B. 128 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 14, 2001; to take effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-d, relating to creating the office of fiscal risk analysis and management within the office of the governor; appointment and qualifications of the chief risk officer; powers and duties; requiring spending units to notify the chief risk officer of proposed purchases of certain goods and services; annual report; requiring a comprehensive strategic plan; authority of chief risk officer to obtain assistance from executive branch agencies; authorizing certain assessments against spending units; authorizing transfer of proceeds of assessments to the office of fiscal risk analysis and management; and termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. GOVERNOR'S OFFICE OF FISCAL RISK ANALYSIS AND MANAGEMENT.

§5-1D-1. Findings and purposes.
§5-1D-2. Definitions.
§5-1D-3. Creation of the office of fiscal risk analysis and management; appointment and qualifications of chief risk officer.
§5-1D-1. Findings and purposes.

The Legislature finds and declares that fiscal risk analysis and management is essential to finding practical solutions to the everyday problems of government and that the management goals and purposes of government would be furthered by the development of a consistent set of fiscal risk analysis and management principles. Therefore, it is the purpose of this article to create, as an integral part of the office of the governor, the office of fiscal risk analysis and management, with the authority to advise and make recommendations to all state spending units on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of an amount of at least one million dollars: Provided, That the authority shall advise and make recommendations to the public employees insurance agency, the consolidated public retirement board, workers' compensation and the board of risk and insurance management on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of any increases of program costs in excess of five percent.

§5-1D-2. Definitions.

As used in this article:

(a) “Chief risk officer” means the person appointed to the position created in section three of this article and who is vested
with authority to assist state spending units in planning and coordinating fiscal risk analysis and management activities that serve the effectiveness and efficiency of the individual state spending units, state executive agencies and further the overall management goals and purposes of government.

(b) “Fiscal risk analysis and management” means issues that arise out of the day-to-day operations of state government that put at fiscal risk the people, property or other assets of the state, the overall operation of state government and its ability to carry and acceptance of fiscal risks on decisions with potential fiscal impact of an amount of at least one million dollars: Provided, That the authority shall advise and make recommendations to the public employees insurance agency, the consolidated public retirement board, workers’ compensation and the board of risk and insurance management on fiscal risk analysis and management functions and decisions with potential long term fiscal impact of any increases of program costs in excess of five percent.

(c) “Fiscal impact” means any anticipated budgetary or other financial impact that may result from the proposed expenditure, decision, or undertaking.

§5-1D-3. Creation of the office of fiscal risk analysis and management; appointment and qualifications of chief risk officer.

(a) There is hereby created the office of fiscal risk analysis and management within the office of the governor. The office shall be administered by the chief risk officer who shall be appointed by the governor with the advice and consent of the Senate and shall serve at the will and pleasure of the governor. The chief risk officer shall have knowledge in the area of self-insured risk pools, advanced training in the area of fiscal risk management and an understanding of the special demands upon
government with respect to budgetary constraints, the protec-
tion of public funds, and federal and state standards of account-
ability.

(b) The chief risk officer may employ the personnel
necessary to carry out the work of the office and may approve
reimbursement of costs incurred by employees to obtain
education and training.

§5-1D-4. Powers and duties of the office to all state spending
units.

With respect to all state spending units, the office of fiscal
risk analysis and management:

(1) Shall develop an organized approach to fiscal risk
analysis and management;

(2) Shall provide, with the assistance of certain executive
branch agencies, technical assistance to the administrators of
the various state spending units in the design and implementa-
tion of fiscal risk analysis and management procedures and
systems;

(3) Shall evaluate, with the assistance of certain executive
branch agencies, the economic justification and suitability of
acceptable fiscal risk levels, the management thereof, and
related services and review and make recommendations on the
need for acquisition of fiscal risk analysis, management
consulting and actuarial services by the state spending units;

(4) Shall develop a mechanism for identifying those
instances in which the sound application of fiscal risk analysis
and management principles can assist agencies in reducing their
exposure to or frequency of loss;
(5) Shall create new tools to assist agencies of government in fulfilling their duties, convene conferences and develop incentive packages to encourage the use of sound fiscal risk management principles;

(6) Shall engage in any other activities reasonably related to the findings and purposes set forth in section one of this article, as directed by the governor; and

(7) Shall charge a fee to be assessed by the chief risk officer to the state spending units for evaluations performed and technical assistance provided under the provisions of this article.

§5-1D-5. Powers and duties of the office to executive agencies.

With respect to executive agencies, the office of fiscal risk analysis and management:

(1) Shall develop a unified and integrated structure of fiscal risk management for all state executive agencies that must be completed by the first day of July, two thousand two;

(2) May establish, based on need and opportunity, priorities and time lines for addressing the fiscal risk analysis requirements of the various executive agencies of state government;

(3) Shall exercise such authority inherent to the chief executive of the state as the governor may, by executive order, delegate, to overrule and supersede decisions made by the administrators of the various executive agencies of government with respect to fiscal risk analysis and management decisions and the acquisition of fiscal risk management services, including, but not limited to, management consulting contracts and contracts for actuarial and related services: Provided, That the provisions of this subdivision do not exempt the various
18 executive agencies from complying with the provision of this
19 code regarding audits and actuarial studies.

20 (4) Shall consult and work closely with staff of other
21 executive agencies for advice and assistance in the formulation
22 and implementation of administrative and operational plans and
23 policies.

§5-1D-6. Fees.

1 All fees collected by the office of fiscal risk analysis and
2 management shall be deposited in a special account in the state
3 treasury to be known as the “Office of Fiscal Risk Analysis and
4 Management Administration Fund”. Expenditures from the
5 fund shall be made by the chief risk officer for the purposes set
6 forth in this article and are not authorized from collections, but
7 are to be made only in accordance with appropriation by the
8 Legislature and in accordance with the provisions of article
9 three, chapter twelve of this code and upon the fulfillment of
10 the provisions set forth in article two, chapter five-a of this
11 code. Amounts collected which are found from time to time to
12 exceed the funds needed for purposes set forth in this article
13 may be transferred to other accounts or funds and used for other
14 purposes by appropriation of the Legislature.

§5-1D-7. Notice of request for proposals by state spending units
required to make purchases through the state
purchasing division.

1 Any state spending unit that is required to submit a request
2 for proposal to the state purchasing division prior to purchasing
3 goods or services shall notify the chief risk officer, in writing,
4 of any proposed purchases of goods or services related to fiscal
5 risk analysis and management, including, but not limited to,
6 management consulting, actuarial or other contracts that
7 involve the management or fiscal risk evaluation of the spend-
8 ing unit with potential fiscal impact of an amount of at least one
million dollars. The notice shall contain a brief description of
the goods and services to be purchased. The state spending unit
shall provide the notice to the chief risk officer ten days prior
to its submission of its request for proposal to the state purchas-
ing division.

§5-1D-8. Notice of request for proposals by state spending units
exempted from submitting purchases to the state
purchasing division.

(a) Any state spending unit that is not required to submit a
request for proposal to the state purchasing division prior to
purchasing goods or services shall notify the chief risk officer,
in writing, of any proposed purchase of goods or services
related to fiscal risk analysis and management, including, but
not limited to, management consulting, actuarial or other
contracts that involved the management or fiscal risk evaluation
of the spending unit with potential fiscal impact of an amount
of at least one million dollars. The notice shall contain a
detailed description of the goods and services to be purchased.
The state spending unit shall provide the notice to the chief risk
officer a minimum of ten days prior to the time it requests bids
on the provision of the goods or services.

(b) If the chief risk officer evaluates the suitability of the
related services under the provisions of subsection (3), section
four of this article and determines that the goods or services to
be purchased or the price requested for the same are not
suitable, he or she shall, within ten days of receiving the notice
from the state spending unit, notify the state spending unit, in
writing, of any recommendations he or she has regarding the
proposed purchase of the goods or services. If the state spend-
ing unit receives a written notice from the chief risk officer
within the time period required by this section, the state
spending unit shall not put the goods or services out for bid less
than fifteen days following receipt of the notice from the chief fiscal management officer.

§5-1D-9. Annual report.

The chief risk officer shall report annually to the legislative joint committee on government and finance on the activities of his or her office.

§5-1D-10. Exemptions.

Except for the provisions of section four of this article, the provisions of this article do not apply to the legislative or judicial branches of state government, unless either the legislative or the judicial branch shall request services from the governor’s office of fiscal risk analysis and management.

§5-1D-11. Termination of office.

The office of fiscal risk analysis and management shall continue to exist until the first day of July, two thousand three, pursuant to the provisions of article ten, chapter four of this code unless sooner terminated, continued or reestablished pursuant to the provisions of such article.

CHAPTER 133

(Com. Sub. for H. B. 2891 — By Delegates C. White, Campbell, Coleman, Boggs, Yeager and Stalnaker)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section fifty-two, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the unlawful taking of timber; providing for a first offense felony when the value of the timber is more than one thousand dollars; establishing notice requirements; and tolling of the statute of limitations.

Be it enacted by the Legislature of West Virginia:

That section fifty-two, article three, 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 3. CRIMES AGAINST PROPERTY

§61-3-52. Wrongful injuries to timber; criminal penalties.

(a) Any person who willfully and maliciously and with intent to do harm unlawfully enters upon the lands of another, cuts down, injures, removes or destroys any timber, without the permission of the owner or his or her representative is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than three times the value of timber injured, removed or destroyed, or confined in the county or regional jail for thirty days, or both: Provided, That if the timber is valued at one thousand dollars or less, the fine shall be no more than one thousand dollars: Provided, however, That a person convicted of a first offense violation of the provisions of this section in which the timber is valued at more than one thousand dollars is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one nor more than two years, or fined not more than three times the value of the timber injured, removed or destroyed, or both fined and confined: Provided further, That a person convicted of a second or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one nor more than three
years, or fined not more than three times the value of the timber
injured, removed or destroyed, or both fined and confined.

(b) The necessary trimming and removal of timber to
permit the construction, repair, maintenance, cleanup and
operations of pipelines and utility lines and appurtenances of
public utilities, public service corporations and to aid registered
land surveyors and professional engineers in the performance
of their professional services, and municipalities, and pipeline
companies, or lawful operators and product purchasers of
natural resources other than timber shall not be considered a
willful and intentional cutting down, injuring, removing or
destroying of timber.

(c) The necessary trimming and removal of timber for
boundary line maintenance, for the construction, maintenance
and repair of streets, roads and highways or for the control and
regulation of traffic thereon by the state and its political
subdivisions or registered land surveyors and professional
engineers shall not be considered a willful and intentional
cutting down, injuring, removing or destroying of timber.

(d) No fine or imprisonment imposed pursuant to this
section shall be construed to limit any cause of action by a
landowner for recovery of damages otherwise allowed by law.
If a person charged or convicted under the provisions of this
section enters into an agreement with a landowner to make
financial restitution for the landowner’s timber damages, any
applicable statute of limitations effecting the landowner’s cause
of action shall be tolled from the date the agreement was
entered into until a breach of the agreement occurs.

(e) If a criminal action is brought under the provisions of
this section, the county prosecutor shall publish a Class II legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code in the county where the
property involved is located which provides a description of the property and a general summary of the timber damages. If a landowner suffering timber damages is not aware of those damages prior to the publication of the Class II legal advertisement, any applicable statute of limitations effecting the landowner's cause of action for the recovery of damages shall be tolled from the time the damages were incurred, and may not commence until the date the final Class II legal advertisement is published.

CHAPTER 134

(Com. Sub. for H. B. 2513 — By Delegates Manchin, Prunty and Caputo)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to freedom of information; modifying penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC RECORDS.

§29B-1-6. Violation of article; penalties.
Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

CHAPTER 135

(S. B. 253 — By Senators Helmick, Ross, Sharpe, Minard, Rowe, Oliverio, Love, Mitchell, Anderson and Unger)

AN ACT to amend and reenact section eighteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the indigent funeral expense allowance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-18. Funeral expenses for indigent persons; filing of affidavit to certify indigency; penalties for false swearing; payment by division.

(a) The department of health and human resources shall pay for reasonable funeral service expenses for indigent persons, in
an amount not to exceed one thousand two hundred fifty dollars.

(b) For purposes of this section, the indigency of a deceased person is determined by the filing of an affidavit with the department, in a form provided by and determined in accordance with the income guidelines as set forth by the department: (1) Signed by the heir or heirs-at-law which states that the estate of the deceased person is pecuniarily unable to pay the costs associated with a funeral; or (2) signed by the county coroner or the county health officer, the attending physician or other person signing the death certificate or the state medical examiner stating that the deceased person has no heirs or that heirs have not been located after a reasonable search and that the deceased person had no estate or the estate is pecuniarily unable to pay the costs associated with a funeral.

(c) Payment shall be made by the department to the person or persons who have furnished the services and supplies for the indigent person’s funeral expenses or to the persons who have advanced payment for same, as the department may determine, pursuant to appropriations for expenditures made by the Legislature for such purpose.

(d) For purposes of this section, “reasonable funeral service expenses” means expenses for services provided by a funeral director for the disposition of human remains.

(e) Any person who knowingly swears falsely in an affidavit required by this section shall be 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 a period of not more than six months, or both.
AN ACT to amend article two, 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 one-a, relating to filing under the West Virginia guardianship and conservatorship act a petition for appointment of a guardian and conservator for a minor approaching adulthood.

Be it enacted by the Legislature of West Virginia:

That article two, 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 one-a, to read as follows:

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-1a. Filing of a petition where protected person is a minor.

A petition for the appointment of a guardian, conservator or both of a minor may be filed if the minor is at least seventeen years and ten months of age and the petition alleges that the minor would qualify as a “protected person”, as that term is defined in section four, article one of this chapter, if he or she were an adult. The hearing provided for in section nine of this article shall occur no sooner than fourteen days prior to the alleged protected person’s eighteenth birthday if the trier of fact is the mental hygiene commissioner and no more than seven days prior to said date if the circuit judge conducts the hearing.
AN ACT to amend article two, 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 thirteen-a, relating to the time of entry of orders of guardianship and conservatorship under the West Virginia guardianship and conservatorship act.

Be it enacted by the Legislature of West Virginia:

That article two, 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 thirteen-a, to read as follows:

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-13a. Time of entry of orders.

An order appointing a guardian, a conservator or both, or an order ruling on a petition or motion filed subsequent to an appointment, shall be entered by the court within fourteen days of the hearing on any such petition filed pursuant to this article if the trier of fact be the mental hygiene commissioner or within seven days of the hearing if the circuit court judge conducts the hearing.
AN ACT to amend and reenact section five, article twenty-five, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, five and six, article fourteen, chapter twenty of said code; to further amend said article by adding thereto two new sections, designated sections nine and ten; and to amend and reenact section six, article seven, chapter sixty-one of said code, all relating to the Hatfield-McCoy recreation area; defining terms; allowing rangers on duty on the Hatfield-McCoy recreation area or trail to carry firearms; permitting the use of the Hatfield-McCoy trail for equestrians; allowing the Hatfield-McCoy recreation area authority to promulgate emergency rules under certain circumstances; requiring certain insurance policies to be read as containing a waiver of defenses; allowing the authority to set user fees for the Hatfield-McCoy recreation area and trail at its discretion; and authorizing federal law enforcement officers to carry concealed weapons.

Be it enacted by the Legislature of West Virginia:

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

Chapter
19. Agriculture.
20. Natural Resources.
61. Crimes and Their Punishment.

CHAPTER 19. AGRICULTURE.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.


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

3 (1) “Charge” means:

4 (A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant: Provided, That the monetary cap on charges imposed pursuant to this article does not apply to the provisions of article fourteen, chapter twenty of this code pertaining to the Hatfield-McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

16 (B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;
(2) "Land" includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(3) "Noncommercial recreational activity" shall not include any activity for which there is any charge which exceeds fifty dollars per year per participant;

(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities as governed by article three, chapter twenty-two of this code or from the use of surface in the conduct of underground coal mining as governed by said article and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining
reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or a person on active duty in the armed forces of the United States, acting in that capacity.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.
§20-14-2. Definitions.
§20-14-5. Powers of authority.
§20-14-6. Hatfield-McCoy recreation area rangers.
§20-14-10. Insurance policies.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway vehicle enthusiasts, mountain bicyclists, equestrians and others. The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented, recreation facilities could exist on private property without diminishing the landowner's interest, control or profitability in the land and without increasing the landowner's exposure to liability.
The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a statutory corporation to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy regional recreation authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(a) “Authority” means the Hatfield-McCoy regional recreational authority;
(b) "Board" means the board of the Hatfield-McCoy regional recreation authority;

(c) "Charge" means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion as set by the authority: Provided, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;

(d) "Hatfield-McCoy recreation area" means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites and other facilities that are a part of the system;

(e) "Land" includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(f) "Owner" includes, but is not limited to, tenant, lessee, occupant or person in control of the premises;

(g) "Recreational purposes" includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(h) "Participating county" means the counties of Boone, Lincoln, Logan, McDowell, Mingo, Wayne and Wyoming and,
with the approval of the board, any other county or counties
where trails and other recreational facilities relating to the
Hatfield-McCoy recreation area are developed in the future
with the cooperation of the county commission.

§20-14-5. Powers of authority.

The authority, as a public corporation and governmental
instrumentality exercising public powers of the state, may
exercise all powers necessary or appropriate to carry out the
purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and
personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to
acquire or grant through easement, license or other appropriate
legal form, the right to develop and use property and open it to
the use of the public;

(3) To mortgage or otherwise grant security interests in its
property;

(4) To procure insurance against any losses in connection
with its property, license or easements, contracts, including
hold-harmless agreements, operations or assets in such amounts
and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the
board determines appropriate for the purposes of meeting future
monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded and
complain and defend in any court;

(7) To contract for the provision of legal services by private
counsel and, notwithstanding the provisions of article three,
chapter five of this code, the counsel may, in addition to the
provisions of other legal services, represent the authority in
court, negotiate contracts and other agreements on behalf of the
authority, render advice to the authority on any matter relating
to the authority, prepare contracts and other agreements and
provide such other legal services as may be requested by the
authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the
management and regulation of its affairs;

(10) To appoint officers, agents and employees and to
contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to
execute all instruments necessary or convenient for carrying on
its business, including contracts with any other governmental
agency of this state or of the federal government or with any
person, individual, partnership or corporation to effect any or
all of the purposes of this article;

(12) Without in any way limiting any other subdivision of
this section, to accept grants and loans from and enter into
contracts and other transactions with any federal agency;

(13) To maintain an office at such places within the state as
it may designate;

(14) To borrow money and to issue its bonds, security
interests or notes and to provide for and secure the payment of
the bonds, security interests or notes and to provide for the
rights of the holders of the bonds, security interests or notes and
to purchase, hold and dispose of any of its bonds, security
interests or notes;
(15) To sell, at public or private sale, any bond or other
negotiable instrument, security interest or obligation of the
authority in such manner and upon such terms as the authority
considers would best serve the purposes of this article;

(16) To issue its bonds, security interests and notes payable
solely from the revenues or other funds available to the author-
ity, and the authority may issue its bonds, security interests or
notes in such principal amounts as it considers necessary to
provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of,
interest on or redemption premiums on, any bonds, security
interests or notes issued by it whether the bonds, security
interests, notes or interest to be funded or refunded have or have
not become due;

(B) The establishment or increase of reserves to secure or
to pay bonds, security interests, notes or the interest on the
bonds, security interest or notes and all other costs or expenses
of the authority incident to and necessary or convenient to carry
out its corporate purposes and powers. Any bonds, security
interests or notes may be additionally secured by a pledge of
any revenues, funds, assets or moneys of the authority from any
source whatsoever;

(17) To issue renewal notes or security interests, to issue
bonds to pay notes or security interests and, whenever it
considers refunding expedient, to refund any bonds by the
issuance of new bonds, whether the bonds to be refunded have
or have not matured except that no renewal notes may be issued
to mature more than ten years from the date of issuance of the
notes renewed and no refunding bonds may be issued to mature
more than twenty-five years from the date of issuance;

(18) To apply the proceeds from the sale of renewal notes,
security interests of refunding bonds to the purchase, redemp-
tion or payment of the notes, security interests or bonds to be refunded;

(19) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants;

(20) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, contract or agreement of any kind to which the authority is a party;

(21) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note venues;

(22) To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the authority may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code;
(23) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy recreation area at the locations within the state as may be determined by the authority;

(24) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy recreation area at such locations within the state as may be determined by the authority;

(25) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

(26) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(27) To provide for law enforcement within the Hatfield-McCoy recreational area by appointing rangers as provided in section six of this article;

(28) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy recreation area;

(29) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;
(30) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy recreation area and to retain and utilize that revenue for any purposes consistent with this article;

(31) To cooperate with the states of Kentucky and Virginia and appropriate state and local officials and community leaders in those states to connect the trails of the West Virginia portion of the Hatfield-McCoy recreation area with similar recreation facilities in those states;

(32) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy recreation area;

and

(33) To directly operate and manage recreation activities and facilities within the Hatfield-McCoy recreation area.

§20-14-6. Hatfield-McCoy recreation area rangers.

The board is hereby authorized to appoint bona fide residents of this state to act as Hatfield-McCoy recreation area rangers upon any premises which are part of the Hatfield-McCoy recreation area, subject to the conditions and restrictions imposed by this section. Before performing the duties of ranger, each appointed person shall qualify for the position of ranger in the same manner as is required of county officers by the taking and filing of an oath of office as required by section one, article one, chapter six of this code and by posting an official bond as required by section one, article two, chapter six of this code. To facilitate the performance of the duties of a ranger, a ranger may carry a firearm or other dangerous weapon while the ranger is on duty.
It is the duty of any person appointed and qualified to preserve law and order on any premises which are part of the Hatfield-McCoy recreation area, the immediately adjacent property of landowners who are making land available for public use under agreement with the authority and on streets, highways or other public lands utilized by the trails, parking areas or related recreational facilities and other immediately adjacent public lands. For this purpose, the ranger shall be considered to be a law-enforcement officer in accordance with the provisions of section one, article twenty-nine, chapter thirty of this code and, as to offenses committed within those areas, have and may exercise all the powers and authority and are subject to all the requirements and responsibilities of a law-enforcement officer. The assignment of rangers to the duties authorized by this section may not supersede in any way the authority or duty of other peace officers to preserve law and order on those premises.

The salary of all rangers shall be paid by the board. The board shall furnish each ranger with an official uniform to be worn while on duty and shall furnish and require each ranger while on duty to wear a shield with an appropriate inscription and to carry credentials certifying the person's identity and authority as a ranger.

The board may at its pleasure revoke the authority of any ranger. The executive director shall report the termination of employment of a ranger by filing a notice to that effect in the office of the clerk of each county in which the ranger's oath of office was filed and in the case of a ranger licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license for the gun or other dangerous weapon was granted.

(a) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen, an owner of land used by or for the stated purposes of the Hatfield-McCoy regional recreation authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the landowner or lessor of the property for recreational purposes does not thereby: (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of these persons.

(c) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.
(d) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: Provided, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself: Provided, however, That equestrians who are using the land upon which the Hatfield-McCoy recreation area is located but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five, article four, chapter twenty of this code.

§20-14-10. Insurance policies.

Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any owner of lands covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of the use of such insured’s land for recreational purposes, unless such provision or endorsement is rejected in writing by the named insured.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

*§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article do not apply to:

*Clerk’s Note: This section was also amended by H.B. 2587 (Chapter 179), which passed prior to this act.
(1) Any person carrying a deadly weapon upon his or her own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia division of corrections duly appointed pursuant to the provisions of section five, article five, chapter twenty-eight of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while the member is on duty;

(6) Any circuit judge, including any retired circuit judge designated senior status by the supreme court of appeals of
West Virginia, prosecuting attorney, assistant prosecuting
attorney or a duly appointed investigator employed by a
prosecuting attorney;

(7) Any probation officer appointed under the provisions of
section five, article twelve, chapter sixty-two of this code;

(8) Any resident of another state who has been issued a
license to carry a concealed weapon by a state or a political
subdivision which has entered into a reciprocity agreement with
this state shall be exempt from the licensing requirements of
section four of this article. The governor may execute recipro-
city agreements on behalf of the state of West Virginia with
states or political subdivisions which have similar gun permit-
ting laws and which recognize and honor West Virginia licenses
issued pursuant to section four of this article;

(9) Any federal law-enforcement officer or federal police
officer authorized to carry a weapon in the performance of the
officer’s duty; and

(10) Any Hatfield-McCoy regional recreation authority
ranger while the ranger is on duty.

CHAPTER 139

(Com. Sub. for S. B. 10 — Senators Chafin and Kessler)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article four-b,
chapter nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to defining registered nurse first assistant under medicaid; defining perioperative nursing; providing for medicaid reimbursement of certain services rendered by a registered nurse first assistant; establishing comparative fees for services provided by a registered nurse first assistant; and eliminating outdated provisions regarding the physician/medical practitioner provider medicaid enhancement board.

Be it enacted by the Legislature of West Virginia:

That sections one and four, article four-b, 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 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER MEDICAID ACT.

§9-4B-1. Definitions.


§9-4B-1. Definitions.

The following words, when used in this article, have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Board" means the physician/medical practitioner provider medicaid enhancement board created to develop, review and recommend the physician/medical practitioner provider fee schedule;

(b) "Physician provider" means an allopathic or osteopathic physician, rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity;
(c) "Nurse practitioner" means a registered nurse qualified by virtue of his or her education and credentials and approved by the West Virginia board of examiners for registered professional nurses to practice as an advanced practice nurse independently or in a collaborative relationship with a physician;

(d) "Nurse-midwife" means a qualified professional nurse registered with the West Virginia board of examiners for registered professional nurses who by virtue of additional training is specifically qualified to practice nurse-midwifery according to the statement of standards for the practice of nurse-midwifery as set forth by the American college of nurse-midwives;

(e) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(f) "Registered nurse first assistant" means one who:

(1) Holds a current active registered nurse licensure;

(2) Is certified in perioperative nursing; and

(3) Has successfully completed and holds a degree or certificate from a recognized program which consists of:

(A) The association of operating room nurses, inc., care curriculum for the registered nurse first assistant; and

(B) One year of post-basic nursing study, which shall include at least forty-five hours of didactic instruction and one hundred twenty hours of clinical internship or its equivalent of two college semesters;
A registered nurse who was certified by the certification board of perioperative nursing before one thousand nine hundred ninety-seven is not required to fulfill the requirements of subdivision (3) of this subsection;

(g) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative and post-operative nursing care to surgical patients;

(h) "Secretary" means the secretary of the department of health and human resources; and

(i) "Single state agency" means the single state agency for medicaid in this state.


(a) The board shall:

(1) Develop and recommend a reasonable physician/medical practitioner provider fee schedule that conforms with federal medicaid laws and remains within the limits of annual funding available to the single state agency for the medicaid program. In developing the fee schedule, the board may refer to a nationally published regional specific fee schedule selected by the secretary of the department of health and human resources. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal medicaid laws and may recommend higher reimbursement rates for basic primary and preventive health care services than for other services. If the single state agency approves the fee schedule, it shall implement the physician/medical practitioner provider fee schedule;

(2) Review the fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of
the board's recommendations, it shall immediately implement those adjustments and shall report the same to the joint commit-
pee on government and finance on a quarterly basis;

(3) Meet and confer with representatives from each medical specialty area so that equity in reimbursement increases or decreases be achieved to the greatest extent possible;

(4) Assist and enhance communications between participating physician and medical practitioner providers and the department of health and human resources; and

(5) Review reimbursements in relation to those physician and medical practitioner providers who provide early and periodic screening diagnosis and treatment.

(b) The board may carry out any other powers and duties as prescribed for it by the secretary.

(c) Nothing in this section gives the board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's medicaid plan are met and shall report the same to the joint committee on govern-
ment and finance on a quarterly basis: Provided, That the single state agency shall provide reimbursement for the services of a registered nurse first assistant which reimbursement shall be no less than thirteen and six tenths of one percent of the rate for a surgeon physician. The purpose of the board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the medicaid provider community and the agency.
(d) On a quarterly basis, the single state agency and the board shall report to the joint committee on government and finance the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider group identified in section one of this article.

CHAPTER 140

(S. B. 734 — By Senators Wooton, Snyder, Caldwell, Fanning, Hunter, Kessler, Minard, Mitchell, Redd, Ross and Deem)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public and community water systems; and administrative penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9a. Public water system and community 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.

(a) A public water system is any water supply or system that regularly supplies or offers to supply water for human
consumption through pipes or other constructed conveyances,
if serving at least an average of twenty-five individuals per day
for at least sixty days per year, or which has at least fifteen
service connections, and shall include: (1) Any collection,
treatment, storage and distribution facilities under the control
of the owner or operator of such system and used primarily in
connection with such system; and (2) any collection or pretreat-
ment storage facilities not under such control which are used
primarily in connection with such system. A public water
system does not include a system that meets all of the following
conditions: (1) Consists only of distribution and storage
facilities (and does not have any collection and treatment
facilities); (2) obtains all of its water from, but is not owned or
operated by, a public water system that otherwise meets the
definition; (3) does not sell water to any person; and (4) is not
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 contami-
nants 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 promul-
gated under this section; recordkeeping; laboratory certifica-
tion; as well as procedures and conditions for granting vari-
ances 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 a maximum of two thousand five hundred dollars per day per violation for systems serving more than ten thousand persons, a minimum of two hundred fifty dollars per day per violation and a maximum of five hundred dollars per day per violation for systems serving over three thousand three hundred persons up to and including ten thousand persons, a minimum of one hundred dollars per day per violation and a maximum of two hundred dollars per day per violation for systems serving three thousand three hundred or fewer persons and each day's violation shall be grounds for a separate penalty. 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.

CHAPTER 141

(H. B. 3242 — By Delegates Douglas, Kuhn, Perdue, Marshall, Ennis, Flanigan and Ellem)

[Passed April 14, 2001; 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 one-a, relating to uniform credentialing for health care practitioners.

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 one-a, to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-1. Legislative findings; purpose.

§16-1A-2. Development of uniform credentialing application forms.

§16-1A-3. Advisory committee.

§16-1A-4. Report required.

§16-1A-1. Legislative findings; purpose.

1 (a) The legislature finds:

2 (1) Credentialing, required by hospitals, insurance companies, prepaid health plans, third party administrators and other health care entities, is necessary to assess and verify the education, training, experience and competence of health care practitioners to ensure that qualified professionals treat the citizens of this state.

3 (2) Currently, each of the entities requiring credentialing has its own credentialing application forms resulting in health care practitioners being required to complete multiple forms listing the same or similar information. The duplication is costly, time consuming and not in the best interests of the citizens of this state.
(3) The secretary of the department of health and human resources and the insurance commissioner share regulatory authority over the entities requiring credentialing.

(b) The purpose of this article is to authorize the development of uniform credentialing application forms by those public officials regulating the entities that require credentialing and to establish an advisory committee to assist in developing a uniform credentialing process and implementing the use of uniform credentialing in this state.

§16-lA-2. Development of uniform credentialing application forms.

Notwithstanding any provision of this code to the contrary, the secretary of the department of health and human resources and the insurance commissioner, on or before the first day of January, two thousand two, shall jointly propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth uniform application forms for credentialing, recredentialing or updating information and to specify the health care practitioners who may utilize the forms.

§16-lA-3. Advisory committee.

The secretary of the department of health and human resources and the insurance commissioner shall jointly establish an advisory committee to assist them in the development and implementation of the uniform credentialing process in this state. The advisory committee shall consist of eleven appointed members. Six members shall be appointed by the secretary of the department of health and human resources: one member shall represent a hospital with one hundred beds or less; one member shall represent a hospital with more than one hundred beds; one member shall represent another type of health care facility requiring credentialing; one member shall be a person...
currently credentialing on behalf of health care practitioners; and two of the members shall represent the health care practitioners subject to credentialing. Five members shall be representative of the entities regulated by the insurance commissioner that require credentialing and shall be appointed by the insurance commissioner: one member shall represent an indemnity health care insurer; one member shall represent a preferred provider organization; one member shall represent a third party administrator; one member shall represent a health maintenance organization accredited by American accreditation health care commission; and one member shall represent a health maintenance organization accredited by the national committee on quality assurance. The secretary of the department of health and human resources and the insurance commissioner, or the designee of either or both, shall be nonvoting ex officio members.

§16-1A-4. Report required.

On or before the first day of January, two thousand two, the secretary of the department of health and human resources and the insurance commissioner shall jointly report to the legislative oversight commission on health and human resources accountability on the need, if any, for further legislation to implement the use of the uniform credentialing application forms developed pursuant to the legislative rule authorized by section two of this article.

CHAPTER 142

(Com. Sub. for H. B. 2871 — By Delegates Amores, Compton and Leach)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section two-a, article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the existing cancer registry to include the collection of medical information concerning intracranial and central nervous system tumors; requiring reports and maintaining confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. CANCER CONTROL.


(a) To the extent funds are available, the director of the division of health shall establish a cancer and tumor registry for the purpose of collecting information concerning the incidence of cancer and nonmalignant intracranial and central nervous system tumors. The information collected by the registry shall be analyzed to prepare reports and perform studies as necessary when such data identifies hazards to public health. Pending appropriate funding, a statewide system shall be phased in and be fully operational by the first day of July, two thousand two, pursuant to the enactment of this section in two thousand one.

(b) All reporting sources, including hospitals, physicians, laboratories, clinics or other similar units diagnosing or providing treatment for cancer and nonmalignant intracranial and central nervous system tumors, shall provide a report of each cancer or tumor case to the cancer and tumor registry in a format specified by the director. The reporting sources shall grant the director or an authorized representative of the registry access to all records which would identify cases of cancer or nonmalignant intracranial and central nervous system tumors or would establish characteristics of cancer or nonmalignant intracranial or central nervous system tumors.
(c) All information reported pursuant to this section is confidential and shall be used for the purpose of determining the sources of malignant neoplasms and nonmalignant intracranial and central nervous system tumors and evaluating measures designed to eliminate, alleviate or ameliorate their effect. A report provided to the cancer and tumor registry disclosing the identity of an individual who was reported as having cancer or tumors shall only be released to reporting sources and persons demonstrating a need which is essential to health related research, except that the release shall be conditioned upon the reporting source and personal identities remaining confidential. No liability of any kind or character for damages or other relief shall arise or be enforced against any reporting source by reason of having provided the information or material to the cancer and tumor registry.

(d) The director of the division of health shall appoint an advisory committee on cancer and tumors with membership consisting of representatives of appropriate agencies, including the West Virginia hospital association; the American cancer society, West Virginia division; the American lung association of West Virginia; the West Virginia medical association; the association of osteopathic medicine; the West Virginia nurses association; the Mary Babb Randolph cancer center; and, at the discretion of the director, any other individuals directly involved. The advisory committee shall provide technical guidance regarding the operation of the cancer registry and shall provide such advice and assistance as needed to carry out effective cancer prevention and control activities. The members of the advisory committee shall serve four-year terms. Vacancies shall be filled in a like manner for the unexpired term.

(e) The director shall promulgate rules related to: (1) The content and design of all forms and reports required by this section; (2) the procedures for disclosure of information gathered by the cancer and tumor registry by monitoring and evaluating health data and from completed risk assessments; and (3) any other matter necessary to the administration of this section.
AN ACT to amend and reenact section three, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the maximum expenditure made by a sanitary board from five thousand dollars to ten thousand dollars before requiring advertising for competitive bids.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, 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 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

*§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

1 The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing of the acquisition or construc-
tion of any such works, or any trust indenture as hereinafter
provided for, shall be approved by the governing body of such
municipality before the same shall be effective. The board may
employ engineers, architects, inspectors, superintendents,
managers, collectors, attorneys, and such other employees as in
its judgment may be necessary in the execution of its powers
and duties, and may fix their compensation, all of whom shall
do such work as the board shall direct. All such compensation
and all expenses incurred in carrying out the provisions of this
article shall be paid solely from funds provided under the
authority of this article, and the board shall not exercise or carry
out any authority or power herein given it so as to bind said
board of said municipality beyond the extent to which money
shall have been or may be provided under the authority of this
article. No contract or agreement with any contractor or
contractors for labor and/or material, exceeding in amount the
sum of ten thousand dollars, shall be made without advertising
for bids, which bids shall be publicly opened and award made
to the best bidder, with power in the board to reject any or all
bids. After the construction, installation, and completion of the
works, or the acquisition thereof, the board shall operate,
manage and control the same and may order and complete any
extensions, betterments and improvements of and to the works
that the board may deem expedient, if funds therefor be
available or are made available as provided in this article, and
shall establish rules and regulations for the use and operation of
the works, and of other sewers and drains connected therewith
so far as they may affect the operation of such works, and do all
things necessary or expedient for the successful operation
thereof. The sanitary board may declare an emergency situation
in the event of collector line breaks or vital treatment plant
equipment failure and shall be exempted from competitive
bidding requirements and enter into direct purchase agreements
or contracts for such expenses. All public ways or public works
damaged or destroyed by the board in carrying out its authority
under this article shall be restored or repaired by the board and
placed in their original condition, as nearly as practicable, if
requested so to do by proper authority, out of the funds pro-
vided by this article.

CHAPTER 144

(Com. Sub. for H. B. 2506 — By Delegates Hatfield, Marshall,
Caputo, Keener, Manuel, Fleischauer and Mahan)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding thereto
a new article, designated article thirty-nine, relating to patient
health care safety; establishing legislative intent and defining
terms; prohibiting discrimination and retaliation against health
care workers for reporting instances of waste or wrongdoing;
requiring confidentiality of health care workers who file reports
or complaints; providing for enforcement through civil actions;
specifying the relief available and a two-year statute of limitation;
and requiring the posting of certain notices by health care entities.

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-nine, to read as follows:

ARTICLE 39. PATIENT SAFETY ACT.
§16-39-2. Legislative findings and purpose.
§16-39-4. Prohibition against discrimination or retaliation.
§16-39-5. Confidentiality of complaints to government agencies.


1 This article may be cited as the "Patient Safety Act of 2001."

§16-39-2. Legislative findings and purpose.

(a) The Legislature finds that:

(1) Patients receiving medical care in this state need stable and consistent care from those providing health care services at every level;

(2) Dedicated health care workers are instrumental in providing quality patient care services and ensuring that the patient's best interests are at all times protected;

(3) During the course of caring for their patients, many health care workers often observe instances of waste or wrongdoing that detrimentally affect both the patients and the health care facility;

(4) Health care workers who observe such matters are often reluctant to report the waste or wrongdoing to the administrator of the health care facility or other appropriate authority for fear of retaliatory or discriminatory treatment through termination, demotion, reduction of time, wages or benefits or other such actions; and

(5) The quality of available health care will suffer in this state if dedicated health care workers are discouraged from
reporting instances of waste or wrongdoing that affect the quality of health care delivery in this state.

(b) Consequently, the Legislature intends by enacting this article to protect patients by providing protections for those health care workers with whom the patient has the most direct contact.


For purposes of this article:

(1) "Appropriate authority" means a federal, state, county or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste or any member, officer, agent, representative or supervisory employee thereof.

(2) "Commissioner" means the commissioner of the division of health;

(3) "Direct patient care" means health care that provides for the physical, diagnostic, emotional or rehabilitational needs of a patient or health care that involves examination, treatment or preparation for diagnostic tests or procedures.

(4) "Discrimination or retaliation" includes any threat, intimidation, discharge or any adverse change in a health care worker's position, location, compensation, benefits, privileges or terms or conditions of employment that occurs as a result of a health care worker engaging in any action protected by this article.

(5) "Good faith report" means a report of conduct defined in this article as wrongdoing or waste that is made without malice or consideration of personal benefit and which the
person making the report has reasonable cause to believe is true.

(6) "Health care entity" includes a health care facility, such as a hospital, clinic, nursing facility or other provider of health care services.

(7) "Health care worker" means a person who provides direct patient care to patients of a health care entity and who is an employee of the health care entity, a subcontractor or independent contractor for the health care entity, or an employee of such subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist or other such person who provides direct patient care.

(8) "Waste" means the conduct, act or omission by a health care entity that results in substantial abuse, misuse, destruction or loss of funds, resources or property belonging to a patient, a health care entity or any federal or state program.

(9) "Wrongdoing" means a violation of any law, rule, regulation or generally recognized professional or clinical standard that relates to care, services or conditions and which potentially endangers one or more patients or workers or the public.

§16-39-4. Prohibition against discrimination or retaliation.

(a) No person may retaliate or discriminate in any manner against any health care worker because the worker, or any person acting on behalf of the worker:

(1) Makes a good faith report, or is about to report, verbally or in writing, to the health care entity or appropriate authority an instance of wrongdoing or waste.
(2) Advocated on behalf of a patient or patients with respect to the care, services or conditions of a health care entity;

(3) Initiated, cooperated or otherwise participated in any investigation or proceeding of any governmental entity relating to the care, services or conditions of a health care entity.

(b) A health care worker with respect to the conduct described is acting in good faith if the health care worker reasonably believes:

(1) That the information is true and

(2) Constitutes waste or wrongdoing as defined in section three of this article.

§16-39-5. Confidentiality of complaints to government agencies.

The identity of a health care worker who complains in good faith to a government agency or department about the quality of care, services or conditions of a health care entity or any waste or wrongdoing by the health care entity shall remain confidential and may not be disclosed by any person except upon the knowing written consent of the health care worker and except in the case in which there is imminent danger to health or public safety or an imminent violation of criminal law.


(a) Any health care worker who believes that he or she has been retaliated or discriminated against in violation of section four of this article may file a civil action in any court of competent jurisdiction against the health care entity and the person believed to have violated section four of this article.

(b) A court, in rendering a judgment for a complainant in an action brought under this article, shall order, as the court


8 considers appropriate, reinstatement of the health care worker,
9 the payment of back wages, full reinstatement of fringe benefits
10 and seniority rights, actual damages or any combination of
11 these remedies. A court may also award the complainant, all or
12 a portion of the costs of litigation, including reasonable
13 attorneys fees and witness fees, if the court determines that the
14 award is appropriate.

15 (c) An action may be brought under this subsection not later
16 than two years after the date of the last event constituting the
17 alleged violation for which the action is brought.


1 Each health care entity shall post and keep posted, in
2 conspicuous places on the premises of the health care entity
3 where notices to employees and applicants for employment are
4 customarily posted, a notice, to be prepared or approved by the
5 commissioner, setting forth excerpts from, or summaries of, the
6 pertinent provisions of this article and information pertaining to
7 the filing of a charge under section four of this article.

CHAPTER 145

(Com. Sub. for S. B. 647 — By Senators Hunter, Mitchell,
Redd, Oliverio, Unger, Edgell, McCabe, Rowe, Burnette,
Caldwell, Prezioso and Fanning)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding thereto
a new article, designated article twenty-eight, relating to creating
a commission on holocaust education.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. COMMISSION ON HOLOCAUST EDUCATION.

§5-28-1. Legislative findings.
§5-28-4. Continuation of the commission.

§5-28-1. Legislative findings.

The Legislature finds and declares:

(1) That the holocaust perpetrated by the Nazis during the period between one thousand nine hundred thirty-three and one thousand nine hundred forty-five resulted in the genocide of six million Jews and millions of non-Jews as part of a carefully orchestrated central government program;

(2) That the holocaust stands as a grim reminder and warning to all generations of genocidal crimes and atrocities committed by man based on ignorance and fear and that all people should rededicate themselves to the principles of human rights and equal protection under the laws of a democratic society;

(3) That education can ensure that citizens are knowledgeable about the events leading up to the holocaust and about the organizations and facilities that were created and used purposefully for the systematic destruction of human beings and that the lessons of holistic trust and respect for peoples of various cultures are important for the citizens of West Virginia as they enter the global marketplace and economy;
(4) That programs, workshops, institutes, seminars, exhibits and other teacher training and public awareness activities for the study of the holocaust have taken place during recent years, but a central resource for schools, churches and communities studying the holocaust is needed;

(5) That, toward that end, the governor, by executive order No. 2-98, dated the sixteenth day of April, one thousand nine hundred ninety-eight, created and established the West Virginia holocaust commission on education; and

(6) That, in furtherance of the intent and purposes of the aforesaid executive order, it is the intent of the Legislature to create a permanent state commission which, as an organized body and on a continuous basis, will survey, design, encourage and promote implementation of holocaust education and awareness programs in West Virginia and will be responsible for organizing and promoting the memorialization of the holocaust on a regular basis throughout the state.


(a) Effective the first day of July, two thousand one, there is created the West Virginia commission on holocaust education.

(b) The commission is composed of eleven members: Two members currently serving on the state board of education, selected by the board; the state superintendent of schools or his or her designee; the director of the division of veterans' affairs; one attorney from the attorney general's office, civil rights division; one teacher who has completed professional development related to holocaust education teaching at the high school level and one teacher who has completed professional development related to holocaust education teaching at the junior high or middle school level, each appointed by the governor with the advice and consent of the Senate; four state residents, appointed
by the governor, with the advice and consent of the Senate, who shall be: Individuals who are holocaust scholars or individuals experienced in the field of holocaust education or survivors, second generation, eye-witness/liberators or individuals recommended by the chair of the present holocaust education commission, created by executive order, who, by virtue of their interest, education or long-term involvement in human rights, prejudice reduction and holocaust education have demonstrated, through their past commitment and cooperation with the existing holocaust commission on education, their willingness to work for holocaust awareness and education in West Virginia.

(c) Members of the commission shall be appointed for terms of three years or until their prospective successors are appointed and qualified. Members are eligible for reappointment. Any member of the commission who fails to attend more than two consecutive meetings without an excuse approved by the commission may be removed from the commission. All vacancies shall be filled by appointment in the same manner as the original appointment, and the individual appointed to fill the vacancy serves for the remainder of the unexpired term.

(d) The governor shall appoint a chairperson for the commission for a term of three years and until his or her successor is appointed and qualified.

(e) The speaker of the House of Delegates shall appoint a member of the House of Delegates and the president of the Senate shall appoint a member of the Senate to serve as advisors to the commission.


(a) The commission shall:
(1) Provide, based upon the collective knowledge and experience of its members, assistance and advice to public and private schools, colleges and universities with respect to the implementation of holocaust education and awareness programs;

(2) Meet with appropriate education officials and other interested public and private organizations, including service organizations, for the purpose of providing information, planning, coordination or modification of courses of study or programs dealing with the subject of the holocaust;

(3) Compile a roster of individual volunteers who are willing to share their verifiable knowledge and experiences in classrooms, seminars and workshops on the subject of the holocaust. The volunteers may be survivors of the holocaust, liberators of concentration camps, scholars, members of the clergy, community relations professionals or other persons who, by virtue of their experience, education or interest, have experience with the holocaust;

(4) Coordinate events memorializing the holocaust and seek volunteers who are willing and able to participate in commemorative events that will enhance public awareness of the significance of the holocaust; and

(5) Prepare annual reports for the governor and the Legislature regarding its findings and recommendations to facilitate the inclusion of holocaust studies and special programs memorializing the holocaust in educational systems in this state.

(b) Members of the commission are not entitled to compensation for services performed as members and are not entitled to reimbursement for expenses.

§5-28-4. Continuation of the commission.
Pursuant to the provisions of article ten, chapter four of this code, the West Virginia holocaust commission on education shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 146

(Com. Sub. for H. B. 3120 — By Delegates DeLong and Swartzmiller)

[Passed April 11, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authority of the racing commission; broadening the commission’s authority to approve or reject license applications; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.
(a) The racing commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the racing commission shall make and enter an order either approving or denying the application. The application may be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the racing commission shall issue a license to conduct a horse or dog race meeting, and shall designate on the face of the license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which the horse or dog race meeting is to be held or conducted (which may be any weekdays, or weeknights, including Sundays), the location of the horse or dog racetrack, place or enclosure where the horse or dog race meeting is to be held or conducted and other information as the racing commission shall consider proper. If an application for a permit is approved, the racing commission shall issue a permit and shall designate on the face of the permit such information as the racing commission shall consider proper.

(b) The racing commission may deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the racing commission finds that the applicant (individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation):

(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;
(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse or dog race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of the application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules of the racing commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the racing commission under the provisions of section seven of this article;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of the applicant.

(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the racing commission shall consider the horse racing
circuits and dog racing circuits with which the horse racetracks
and dog racetracks in this state are associated or contiguous to,
and shall also consider dates which are calculated to increase
the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is
neither transferable nor assignable to any other racing associ-
ation and may not permit the holding or conducting of a horse or
dog race meeting at any horse or dog racetrack, place or
enclosure not specified thereon. However, if the specified horse
or dog racetrack, place or enclosure becomes unsuitable for the
horse or dog race meeting because of flood, fire or other
catastrophe, or cannot be used for any reason, the racing
commission may, upon application, authorize the horse or dog
race meeting, or any remaining portion thereof, to be conducted
at any other racetrack, place or enclosure available for that
purpose, provided that the owner of the racetrack, place or
enclosure willingly consents to the use thereof.

(e) No type of horse racing or dog racing shall be conducted
by a licensee at any race meeting other than that type for which
a license was issued.

(f) Each permit issued under the provisions of this section
shall be for the period ending the thirty-first day of December
of the year for which it was issued, and shall be valid at all
horse or dog race meetings during the period for which it was
issued, unless it be sooner suspended or revoked in accordance
with the provisions of this article. A permit issued under the
provisions of this article is neither transferable nor assignable
to any other person.

(g) The racing commission shall propose rules for legisla-
tive approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code which establish the criteria
for the approval or denial of a license or permit.
AN ACT to amend and reenact section thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia thoroughbred development fund and thoroughbred horse racing; increasing amount of money available from the fund for awards and purses in stakes races; removing limitation on number of stakes races; increasing frequency of restricted races; and giving West Virginia accredited thoroughbred horses preferences for entry in certain races.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

(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 times and in 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 recom-
mended 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 three hundred thousand dollars of the fund shall be available for distribution for stakes races. One of the stakes 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) may only be paid on the first one hundred thousand dollars of any purse, and not on any amounts in excess of the first one hundred thousand dollars.

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 distribu-
tion 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 of the first one hundred thousand dollars.

(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 of the first one hundred thousand dollars.

(4) In no event may 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.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be
used 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 two 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) 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 subdivision (2) of this subsection, 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 do 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 the thirty-first day of December, one thousand nine hundred ninety-two.

(k) From the first day of July, two thousand one, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at 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 the thirty-first day of December, one thousand nine hundred ninety-two.
AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an increase in the allocation of the state ceiling for private activity bonds to the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code or
under article eighteen, chapter thirty-one of this code, during any calendar year may not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391 et seq. of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; and (iii) that it is in the best interest of this state and its citizens to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects. It is hereby further determined and declared as a matter of legislative finding: (i) That the production of bituminous coal in this state has resulted in coal waste which is stored in areas generally referred to as gob piles; (ii) that gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in gob piles to produce alternative forms of energy needs to be encouraged; (iv) that Section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of private activity bonds; and (v) that it is in the best interest of this state and its citizens to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for these projects.
(b) On or before the first day of each calendar year, the executive director of the development office shall determine the state ceiling for the year based on the criteria of the United States Internal Revenue Code. The annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code, as follows:

(1) For the calendar year two thousand one, fifty million dollars and for each subsequent calendar year, forty percent of the state ceiling for that year shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects;

(2) The amount remaining after the allocation to the West Virginia housing development fund described in subdivision (1) of this subsection shall be retained by the West Virginia development office and shall be referred to in this section as the “state allocation”;

(3) Thirty-five percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as “nonexempt projects”, which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That all requests or reservations of funds from projects described in this subsection are submitted to the development office on or before the first day of November of each calendar year: Provided, however, That on the fifteenth day of November of each
calendar year the uncommitted portion of this part of the state allocation, shall revert to and become part of the state allocation portion described in subsection (g) of this section; and

(4) Ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first day of November of each calendar year: Provided, however, That on the fifteenth day of November of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(c) The remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule that the council for community and economic development promulgates pursuant to section three, article two, chapter five-b of this code: Provided, That no reservation may be in an amount in excess of fifty percent of this portion of the state allocation: Provided, however, That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on
or before the first day of November of each calendar year:

Provided further, That on the fifteenth day of November of each calendar year the uncommitted portion of this part of the state allocation shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(d) No reservation may be made for any project until the governmental body seeking the reservation submits a notice of reservation of funds as provided in subsection (e) of this section. The governmental body shall first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of the inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the development office. The notice shall include information required by the development office pursuant to any rule of the council for community and economic development. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of:

(i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or

(ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent the project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the executive director of the development office:

Provided, That no discretionary reservation may be made for any single project described in this subsection in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made. A discretionary reservation of the state allocation for a project described in this subsection may not be granted by the execu-
tive director of the development office unless the project for which the request is made has received a certification from the federal energy regulatory commission as a qualifying facility or a cogeneration project.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time considered expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(f) The development office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, that a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of
reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first of December following the date of reservation if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the bond issue has not been received by the development office within that time, then the reservation shall expire and be considered to have been forfeited and the funds reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available for other qualified issues in accordance with this section and the Internal Revenue Code: Provided, That as to any reservation for a nonexempt project or any reservation for a project described in subdivision (4), subsection (b) of this section that is forfeited on or after the first day of November in any calendar year, the reservation shall revert to the state allocation for allocation by the industrial revenue bond allocation review committee: Provided, however, That as to any notice of reservation of funds received by the development office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the notice relates may not expire or be subject to forfeiture: Provided further, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund which shall be
considered to have elected to carry forward the unused state
ceiling for the purpose of issuing qualified mortgage bonds,
qualified mortgage credit certificates or bonds for qualified
residential rental projects, each as defined in the Internal
Revenue Code. All requests for subsequent reservation of funds
upon loss of a reservation pursuant to this section shall be
treated in the same manner as a new notice of reservation of
funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project
described in subdivision (4), subsection (b) of this section or for
an energy producing project which relies, in whole or in part,
upon coal waste as fuel and otherwise qualifies as a solid waste
facility under Section 142(a)(6) of the United States Internal
Revenue Code of 1986, notwithstanding the language of
subsection (g) of this section, the reservation shall remain fully
available with respect to the project until the first day of
October in the year from which the reservation was made at
which time, if the bond issue has not been finally closed, the
reservation shall expire and be considered forfeited and the
funds reserved are released as provided in subsection (g) of this
section.

CHAPTER 149

(H. B. 2905 — By Delegates Perdue, Kuhn and Angotti)

[Passed April 11, 2001; in effect ninety days of passage. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereeto a new article, designated article eighteen-d, relating to the
establishment and administration of a West Virginia affordable housing trust fund; creating an affordable housing trust fund board of directors and specifying its powers and responsibilities; defining eligible activities and organizations; requiring an application period and selection criteria; requiring confidentiality; prohibiting conflicts; providing tax exemptions; requiring the publication of an annual report; requiring an annual audit by a licensed accountant; and providing for dissolution or liquidation of trust fund.

_Be it enacted by the Legislature of West Virginia:_

That chapter thirty-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 eighteen-d, to read as follows:

**ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.**

§31-18D-1. Short title.
§31-18D-2. Legislative finding and purpose.
§31-18D-3. Definitions.
§31-18D-4. Affordable housing trust fund.
§31-18D-5. Housing trust fund board of directors.
§31-18D-6. Powers and responsibilities of the board.
§31-18D-7. Eligible activities; eligible organizations.
§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.
§31-18D-12. Tax exemption.
§31-18D-14. Exemption from certain requirements; audit.
§31-18D-15. Dissolution or liquidation of trust fund.

§31-18D-1. Short title.

1 This article may be known and cited as the “West Virginia
2 Affordable Housing Trust Fund Act.”
§31-18D-2. Legislative finding and purpose.

The Legislature finds that current and past economic conditions in this state, changing federal housing policies which devolve responsibility for housing back to state government, declining resources at the federal level and changing demographics have resulted in low and moderate income persons, including elderly persons and persons with special needs, being unable to obtain safe, decent and affordable housing in this state. Lack of affordable housing affects the ability of communities to develop and maintain strong and stable economies and impairs the health, stability and self-esteem of individuals and families. The Legislature further finds that financing affordable housing, especially in rural areas and small communities, is becoming increasingly difficult and is often characterized by fragmented, uncoordinated, burdensome and expensive funding mechanisms. For these reasons, it is in the public interest to establish a new resource known as the West Virginia affordable housing trust fund to encourage stronger partnerships, collaboration and greater involvement of local communities in meeting housing needs in West Virginia. It is the intent of the Legislature that this trust fund assist in increasing the capacity of community housing organizations and encourage private sector businesses and individuals to contribute capital to community-based organizations and assist them in providing safe, decent and affordable housing to our citizens.

§31-18D-3. Definitions.

(a) "Board" is the board of directors of the West Virginia affordable housing trust fund established pursuant to this article.

(b) "Housing" includes owner-occupied dwellings, rental units and other types of shelter for individuals and families.
(c) "Low or moderate income" means the income of individuals or families that is determined from time to time by the board as a percentage of the area median income for the state. The board may use the income data provided by the United States department of housing and urban development or other reliable income data as determined by a resolution of the board.

(d) "Technical assistance" means activities that are directly related to a nonprofit organization's ability to provide housing for low income persons and includes, but is not limited to, land use and planning costs, design and engineering services, loan packaging assistance, program development assistance and construction consultation.

(e) "Trust fund" means the West Virginia affordable housing trust fund established by this article.

§31-18D-4. Affordable housing trust fund.

The West Virginia affordable housing trust fund is established as a governmental instrumentality of the state and public body corporate.

§31-18D-5. Housing trust fund board of directors.

(a) The affordable housing trust fund has a board of directors, which consists of eleven voting members. The members of the board are responsible for administering the trust fund.

(b) The trust fund board of directors consists of:

(1) The secretary of the department of health and human resources, ex officio, or his or her designee;

(2) The executive director of the West Virginia development office, ex officio, or his or her designee;
(3) The executive director of the West Virginia housing development fund, ex officio, or his or her designee;

(4) One member who is chosen from the private directors appointed by the governor to the board of the West Virginia housing development fund;

(5) One member who is an officer of a corporation or member of a limited liability company, which is currently licensed to do business in West Virginia and is engaged in real estate development;

(6) Three members who are executive directors or officers of not-for-profit organizations, which are not affiliated with one another through common management control and which are currently licensed to do business in West Virginia and which have been recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U.S.C. §501(c)(3), and are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes, provide housing assistance to low or moderate income citizens of this state;

(7) One member representative of the banking industry;

(8) One citizen member who is representative of the population served by the trust fund; and

(9) One member who is an executive director of a public housing authority operating in a county or municipality in this state.

(c) Not more than three members, excluding the ex officio members, shall be appointed from any one congressional district. Not more than four of the members, excluding the ex officio members, may belong to the same political party. Except for initial appointments and midterm special appointments made to fill irregular vacancies on the board, members shall be
appointed for terms of three years each. Initial appointments shall consist of three members whose terms expire after two years, three members whose terms expire after three years and two members whose terms expire after four years. Members are eligible for reappointment. However, no member may serve for more than two consecutive full terms. Except for midterm special appointments made to fill irregular vacancies on the board, appointment terms shall begin on the first day of July of the beginning year. All appointment terms, special and regular, end on the thirtieth day of June of the final year of the term.

(d) All members of the board except those who serve ex officio shall be appointed by the governor, with the advice and consent of the Senate.

(e) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office, and the governor may declare the office vacant and fill the vacancy as provided in other cases of vacancy.

(f) The governor shall designate one of the initial members as chairperson of the board. During or after the first meeting of the board the board may select a new chairperson and shall annually select its chairperson.

(g) The board shall meet not less than four times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members. Board members shall be reimbursed for sums necessary to carry out responsibilities of the board and for reasonable travel expenses to attend board meetings. The ex officio members may not be reimbursed by the fund for travel expenses to attend board meetings.

(h) Six members of the board is a quorum. No vacancy in the membership of the board impairs the right of a quorum to exercise all the rights and perform all the duties of the board.
No action may be taken by the board except upon the affirmative vote of at least six of the members.

§31-18D-6. Powers and responsibilities of the board.

(a) It is the duty of the board to manage and control the affordable housing trust fund. In order to carry out the day-to-day management and control of the trust fund and effectuate the purposes of this article, the board may appoint an executive director and other staff. The board shall fix the executive director’s duties and compensation as well as that of other staff. The executive director and other staff serve at the will and pleasure of the board. The board may provide for staff payroll and employee benefits in the same manner as the West Virginia housing development fund provides for its employees.

(b) The members of the board and its officers are not liable personally, either jointly or severally, for any debt or obligation created by the board.

(c) Members of the board and its officers and employees shall be provided insurance coverage by the state’s risk and insurance management board to the same extent and in the same manner the coverage is applicable to state government agencies and appointed state officials and employees. The board may elect to obtain other forms of insurance coverage it considers reasonable for its operations.

(d) The acts of the board are solely acts of its corporation and are not those of an agent of the state, nor is any debt or obligation of the board a debt or obligation of the state.

(e) The board shall:

(1) Develop and implement comprehensive policies and programs for the use of the trust fund that ensures the equitable distribution of moneys from the trust fund throughout the
(2) Develop and implement an application and selection system to identify housing sponsors or providers of affordable housing developments or programs that qualify to receive assistance from the trust fund for eligible activities;

(3) Provide funds for technical assistance to prospective applicants;

(4) Monitor services, developments, projects or programs receiving assistance from the trust fund to ensure that the developments are operated in a manner consistent with this article and in accordance with the representations made to the trust fund board by the sponsors of the services, developments, projects or programs;

(5) Recommend legislation to further its mission of providing housing for low to moderate income citizens of this state;

(6) Provide funding to increase the capacity of nonprofit community housing organizations to serve their communities;

(7) Research and study housing needs and potential solutions to the substandard quality or lack of affordable housing;

(8) Coordinate programs with other entities when doing so fulfills its mission to provide housing to low to moderate income citizens of this state;

(9) Convene public meetings to gather information or receive public comments regarding housing policy or issues;

(10) Distribute available funds pursuant to policies established by it which may permit the establishment of a permanent endowment; and
(11) Serve as a clearing house for information regarding housing services and providers within this state.

(f) The West Virginia housing development fund shall provide office space and staff support services for the executive director and the board, shall act as fiscal agent for the board and, as such, shall provide accounting services for the board, invest all funds as directed by the board, service all investment and loan activities of the board as requested, and shall make the disbursements of all funds as directed by the board, for which the West Virginia housing development fund shall be reasonably compensated, as determined by the board.

§31-18D-7. Eligible activities; eligible organizations.

(a) The board shall use the moneys from the trust fund to make, or participate in the making, of loans or grants for eligible activities that shall include, but not be limited to:

(1) Providing funds for new construction, rehabilitation, repair or acquisition of housing to assist low or moderate income citizens including land and land improvements;

(2) Providing matching funds for federal housing moneys requiring a local or state match;

(3) Providing funds for administrative costs for housing assistance programs or nonprofit organizations eligible for funding pursuant to subsection (b) of this section if the grants or loans provided will substantially increase the recipient's access to housing funds or increase its capacity to supply affordable housing;

(4) Providing loan guarantees and other financial mechanisms to facilitate the provision of housing products or services;
(5) Providing funds for down payments, closing costs, foreclosure prevention, home ownership counseling and security bonds which facilitate the construction, rehabilitation, repair or acquisition of housing by low to moderate income citizens; and

(6) Providing risk underwriting products not provided by private sector entities to facilitate broader accessibility of citizens to other federal or state housing funds or loan programs. The products shall be established using professional risk underwriting standards and separate corporate vehicles may be created and capitalized by the trust fund to provide the products.

(b) Organizations eligible for funding from the trust fund include the following: (1) Local governments; (2) local government housing authorities; (3) nonprofit organizations recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U.S.C. §501 (c) (3), and which are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes provide assistance to low or moderate income citizens of this state; and (4) regional or statewide housing assistance organizations that have been recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, as amended, and which provide assistance to low and moderate income or low income citizens of this state.


The board has the power:

(1) To make loans or grants;

(2) To accept appropriations, gifts, grants, bequests and devises and to utilize or dispose of the same to carry out its
5 corporate purposes. The board has the discretion to refuse any
gift it considers inappropriate;

(3) To make and execute contracts, releases, compromises,
agreements and other instruments necessary or convenient for
the exercise of its powers or to carry out its corporate purposes;

(4) To collect reasonable fees and charges in connection
with making and servicing loans, notes, bonds, obligations,
commitments and other evidences of indebtedness, and in
connection with providing technical, consultative and project
assistance services;

(5) To sue and be sued;

(6) To have a seal and alter the same at will;

(7) To hire its own employees and appoint officers and
consultants as it considers advisable, and to fix their compensa-
tion and prescribe their duties;

(8) To acquire, hold and dispose of real and personal
property for its corporate purposes;

(9) To enter into agreements or other transactions with any
federal or state agency, any person and any domestic or foreign
partnership, corporation, association or organization;

(10) To acquire real property, or an interest in real property,
in its own name, by purchase, transfer, bequest, gift or foreclos-
sure, where appropriate or is necessary to protect any loan in
which the board has an interest and to sell, transfer and convey
any property to a buyer and, in the event that a sale, transfer or
conveyance cannot be effected with reasonable promptness or
at a reasonable price, to lease property to a tenant. Before any
real property is transferred to the trust, the seller or donor must
have clear title to the property. The board has the discretion to
require that the seller or donor agree, in the terms of the
transfer, that any liability for environmental defects on the
property is not waived by the transfer and that the seller or
donor indemnify the trust for any liability associated with
activities that occurred or conditions that exist on the property.
The board may require the transferor of the property to bear the
costs of an environmental assessment of the property, con-
ducted in a manner satisfactory to the board;

(11) To purchase or sell, at public or private sale, any
mortgage or other negotiable instrument or obligation securing
a loan;

(12) To procure insurance against any loss in connection
with its property in such amounts, and from such insurers, as
may be necessary or desirable;

(13) To consent, whenever it considers it necessary or
desirable in the fulfillment of its corporate purpose, to the
modification of the rate of interest, time of payment or any
installment of principal or interest or any other terms, of an
investment, loan, contract or agreement of any kind to which
the board is a party;

(14) To establish training and educational programs to
further the purposes of this article;

(15) To acquire, by purchase or otherwise, and to hold,
transfer, sell, assign, pool or syndicate or participate in the
syndication of, any loans, notes, mortgages, securities or debt
instruments or other instruments evidencing loans or equity
interests in or for the fostering, repairing, or providing afford-
able housing to the citizens of this state;

(16) The board has the authority to make, and from time to
time, amend and repeal bylaws and rules not inconsistent with
the provisions of this article; and

(17) To have and exercise all other general powers of a
corporation in this state.

(a) The board shall announce by public notice at least two periods annually for prospective applicants to submit proposals, applications or requests for funding. Each period shall be for at least ninety days duration during each calendar year in which funds are available from the trust fund. The board shall approve or deny properly submitted and completed applications, proposals or requests within sixty days of their receipt.

(b) The board shall determine whether each person making an application, proposal or request for funding is an eligible entity and approve as many applications, proposals or requests as will effectively use the available moneys in the trust fund less costs required to administer the program. In selecting entities to receive trust fund assistance, the board shall develop a qualified allocation and selection plan as often as it considers appropriate in order to provide affordable housing and improve the capacity of nonprofit housing entities to supply affordable housing to low and moderate income citizens of this state. The allocation and selection plan for each period shall be available for review of prospective applicants and the general public in sufficient time for prospective applicants to reasonably prepare an application, project proposal or request for funding.

(c) No moneys may be expended from the trust fund for projects that discriminate against any buyer or renter because of race, religion, sex, familial status or national origin.

(d) The board shall forward to the West Virginia housing development fund for its review and information approved requests, applications and proposals for funding containing information as is necessary to permit the West Virginia housing development fund to carry out its duties under this article.

§31-18D-10. Documentary materials concerning financial or personal information; confidentiality.
Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that the material or data consists of financial or personal information regarding the financial position or activities of a for-profit business or natural person, are not public records and are exempt from any disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of the financial or personal information may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.


In addition to any requirements imposed in article two, chapter six-b of this code, if the board receives an application, request for funding or proposal from any entity of which a member of the board, or an immediate family member of a board member, is also an officer, director, employee or owner of any entity which is a party to the proposed transaction, the board member shall:

(1) Disclose the relationship to the board, in writing;

(2) Refrain from participating in board discussions concerning the application, request for funding or proposal; and

(3) Refrain from voting the application, request for funding or proposal.

§31-18D-12. Tax exemption.

The trust fund is not required to pay any taxes and assessments to the state of West Virginia, or any county, municipality or other governmental subdivision of the state of West Virginia, upon any of its property or upon its obligations or other evidences of indebtedness pursuant to the provisions of this
article, or upon any moneys, funds, revenues or other income
held or received by the trust fund and the income from it is
exempt from taxation, except for death and gift taxes, taxes on
transfers, sales taxes, real property taxes and business and
occupation taxes.


The board shall make a report to the governor and the
Legislature within ninety days of the close of each fiscal year.
The report shall include summaries of all meetings of the board,
an analysis of the overall progress of the program, fiscal
concerns, the relative impact the program is having on the state,
and any suggestions and policy or legislative recommendations
that the board may have. The report shall include: (1) The
applications funded in the previous calendar year; (2) the
identity of organizations receiving funds and significant private
sector partners of each project or program; (3) the location of
each project unless the disclosure would endanger occupants or
unduly invade the privacy of occupants; (4) the amount,
maturity, interest rate, collateral and other pertinent terms of
funding provided to the project or program and the amount of
other funds leveraged; (5) the number of units of housing
created by the project and the occupancy rate; (6) the expected
cost of rent or monthly payment for those units; and (7) the
amount of revenue deposited into the West Virginia affordable
housing trust fund. The report is public information and shall be
made available to the general public for examination and
copying.

§31-18D-14. Exemption from certain requirements; audit.

(a) In order to provide the greatest flexibility to entities
receiving funding from the trust fund, the proposals, applica-
tions and requests funded under this article are exempt from the
bidding and public sale requirements, from the approval of
contractual agreements by the department of administration or
the attorney general and from the requirements of chapter five-a of this code.

(b) The trust fund's financial position, activities, transactions, documents and records are subject to an annual audit by an independent firm of certified public accountants.

§31-18D-15. Dissolution or liquidation of trust fund.

In the event that the trust fund is dissolved or liquidated by the Legislature, after payment of all debts, obligations or expenses of the trust fund, all assets then remaining in the trust fund shall be distributed to the West Virginia housing development fund, a governmental instrumentality of the state of West Virginia created pursuant to section four, article eighteen of chapter thirty-one.

CHAPTER 150

(H. B. 2814 — By Delegates Boggs, Beane, Douglas, Stemple and Compton)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal article eight, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eight, article two of said chapter; and to amend chapter nineteen of said code by adding thereto a new article, designated article thirty, all relating to transferring administration of the donated food program from the department of health and human resources to the department of agriculture.

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

Chapter
19. Agriculture.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-8. Information and referral services.

(a) Each local human services office shall compile, maintain and post a current list of donated food banks and other emergency food providers in the area served by the local food stamp office and refer individuals who need food to local programs that may be able to provide assistance.

(b) The department shall use its existing statewide toll free telephone number to provide emergency food information and to refer needy individuals to local programs that may be able to provide assistance. The department shall publish the telephone number for referrals in the emergency telephone numbers section of local telephone books. The department shall display this telephone number in all its offices that issue food stamps.

CHAPTER 19. AGRICULTURE.

ARTICLE 30. DONATED FOOD.

§19-30-1. Purpose.
§19-30-1. Purpose.

The purpose of this article is to address the problem of hunger in this state by improving the distribution of food to the hungry, providing a means of funding agencies which distribute food on an emergency basis, gathering and disseminating information related to the problem of hunger, assuring that distribution activities are responsive to the needs of local donated food banks, facilitating the creation of donated food banks and ensuring maximum access to food banks.

§19-30-2. Administration of donated food program transferred from department of health and human resources to department of agriculture.

(a) Effective the first day of July, two thousand one, the department of agriculture is designated as the state agency to:

(1) Receive food donated by the United States department of agriculture, other federal or state agencies, corporations, private persons or entities;

(2) Receive payments for storage and distribution of the donated food;
§19-30-3. Special revenue account created for donated food program.

(a) There is hereby established in the state treasury a special revenue account to be known as the “donated food fund” account. Expenditures from said account shall be used by the department of agriculture for the operation of the donated food program 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.
(b) The commissioner is authorized to solicit and accept donations, gifts, grants, bequests and other funds made available to the department of agriculture from private sources for the donated food program, which funds shall be placed in the donated food fund special revenue account.

§19-30-4. Donation of food items; exemption from civil and criminal liability.

Any person who makes a good faith donation of prepared or perishable food which appears to be fit for human consumption at the time it is donated to a charitable or nonprofit organization is not liable for damages in any civil action or subject to criminal prosecution for any injury or death due to the condition of the food unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.

A charitable or nonprofit organization or an officer, employee or volunteer of the organization that in good faith receives and distributes, without charge, food which appears to be fit for human consumption at the time it is distributed is not liable for damages in any civil action or subject to criminal prosecution for any injury or death due to the condition of the food unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the organization or its officers, employees or volunteer workers.

This section applies to all good faith donations of perishable food which is not readily marketable due to appearance, freshness, grade, surplus supply or other conditions.

§19-30-5. Definitions.

In this article, unless the context otherwise requires:
"Agricultural product" means any fowl, animal, vegetable or other item, product or article which is customary food or which is proper food for human consumption.

"Donated food bank" means a nonprofit organization that solicits, stores, or redistributes food products to charitable organizations and individuals for the purpose of feeding needy families and individuals.

"Nonprofit charitable organization" means an organization which is organized and operates for a charitable purpose.

§19-30-6. Authorization of donations; diversion of products by directors to organizations.

A person engaged in the business of processing, distributing or selling any agricultural product may donate, free of charge, any agricultural product to a donated food bank. To assist in accomplishing the purposes of this section, the director of each department of state government shall divert, whenever possible, surplus agricultural products to organizations operating pursuant to this article.

§19-30-7. Surplus food collection and distribution centers.

The department of agriculture shall continue operation of and shall publicize the services of an information and food collection center. The center shall receive and transmit information concerning available agricultural products and information on each organization desiring or needing agricultural products to be donated. The center shall also collect, receive, handle, store and distribute donated agricultural products. A nonprofit charitable organization which regularly needs agricultural products may be listed with a food collection center to be notified if agricultural products are available.

In order to qualify as a donated food bank, an organization shall meet all of the following minimum standards:

(a) Have access to storage facilities and refrigeration equipment for the purpose of collecting, receiving, handling, storing and distributing donated agricultural products;

(b) Be incorporated as a nonprofit tax exempt organization and eligible as a charitable organization under the Internal Revenue Code (26 United States code section 501 (c) (3)) or affiliated with a qualified organization;

(c) Maintain records for the proper control of inventory;

(d) Demonstrate the availability of adequate liability insurance to cover the activities conducted pursuant to this article; and

(e) Show local support through funding sources, letters of endorsement and a board of directors which reflects the community and population to be served.

§19-30-9. State surplus buildings and equipment; availability to donated food banks.

The commissioner of the department of administration shall assist a food bank by locating and providing available state surplus buildings or equipment necessary for the operation of a donated food bank for use without charge.

§19-30-10. Effect of article on other nonprofit organizations.

Nothing in this article may restrict or limit the operation of any other nonprofit organization which is engaged in the distribution of agricultural products to nonprofit charitable organizations.
§19-30-11. Application of article to food stamp act.

Consonant with 7 C.F.R. 273.9(c)(1), programs operated in accordance with this article shall complement and not in any way lessen assistance to families and individuals pursuant to the Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 through 7 U.S.C. 2026).

§19-30-12. Donated food bank assistance fund; restriction.

(a) The fund formerly known as the charity food bank assistance fund is redesignated the donated food bank assistance fund and is continued. The fund consists of moneys provided by appropriation.

(b) A donated food bank which meets the minimum standards for food banks may qualify, subject to available moneys, for assistance from this fund for any of its operations.

(c) Assistance granted pursuant to this article shall be administered by the commissioner of agriculture. No more than five percent of the assistance granted to a donated food bank pursuant to this article may be used for administrative purposes.

CHAPTER 151

(Com. Sub. for S. B. 525 — By Senators Unger, Prezioso, Oliverio, Snyder, Facemyer, Edgell, Rowe, Helmick, Fanning, Sharpe, Ross, Hunter, Caldwell, Redd, Burnette, Minar, Minard, Kessler, Plymale, Love, Mitchell, Boley, Bowman, Anderson, McCabe and Tomblin, Mr. President)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-m, relating to establishing the statewide independent living council; providing for the powers and duties of the council; providing for a state plan for the provision of independent living services to people with disabilities to be jointly developed by the council and the division of rehabilitation services; providing that available funding for independent living services shall be administered by the division of rehabilitation services; and specifying funding eligibility criteria for centers for independent living.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1OM. WEST VIRGINIA INDEPENDENT LIVING ACT.

§18-1OM-1. Short title.

§18-1OM-2. Legislative findings and declarations.

§18-1OM-3. Purpose.

§18-1OM-4. Definitions.

§18-1OM-5. Eligibility for services.

§18-1OM-6. Statewide independent living council.

§18-1OM-7. State plan for independent living.

§18-1OM-8. Funding and grants.

§18-1OM-1. Short title.

This article shall be known and may be cited as the “West Virginia Independent Living Act”.

§18-1OM-2. Legislative findings and declarations.

The Legislature hereby finds and declares the following:
1608 INDEPENDENT LIVING ACT [Ch. 151

(1) The state recognizes the value of independent living services in enabling people with disabilities to live more independently in their own homes and communities.

(2) Persons with disabilities have the best capacity to design, develop, manage and implement the programs and services which are intended to assist them.

(3) The federal rehabilitation act requires this state to develop a state plan for independent living to describe and direct independent living services in West Virginia.

(4) The federal rehabilitation act further calls for the establishment and operation of a statewide independent living council to monitor, review and evaluate the implementation of the state’s plan for independent living services.

(5) There are approximately one quarter of a million residents in this state with disabilities who could benefit directly or indirectly from the provision of independent living services by the division of rehabilitation services and the state’s centers for independent living.

(6) Twenty-five percent of West Virginia’s total population is over fifty-five years of age and thirteen and one-half percent of that population requires assistance with activities of daily living in order to live independently in their own homes.

(7) A need exists for a coordinated network of consumer-controlled centers for independent living that effectively reaches persons with disabilities in all fifty-five counties of the state.

§18-10M-3. Purpose.

The purpose of this article is to authorize, facilitate or provide for services and activities that will enable individuals
with disabilities to live as independently as possible in their own homes and communities; to promote the philosophy of independent living, including consumer control, peer support, self-help, self-determination, equal access and individual and systems advocacy; to enhance and maximize the leadership abilities, empowerment, independence and productivity of individuals with significant disabilities; and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of our society. To this end, services provided pursuant to this article shall be offered in the most integrated settings to the maximum extent possible, within available resources.

§18-10M-4. Definitions.

Terms used in this article have the same meanings as those provided in the federal rehabilitation act, as follows:

(a) "Consumer control" means circumstances in which individuals with disabilities having decision-making authority.

(b) "Council" means the statewide independent living council.

(c) "Division" means the division of rehabilitation services.

(d) "Independent living services" means advocacy, independent living skills, training, information and referral, peer counseling, peer support and any other service directed by the state plan which may include, but is not limited to, the following:

(1) Assistive devices and equipment;

(2) Communication services;

(3) Counseling and related services;
(4) Community awareness programs to enhance the understanding and integration into society of individuals with disabilities;

(5) Environmental modifications;

(6) Family services;

(7) Mobility training;

(8) Personal assistance services;

(9) Prostheses and other appliances and devices; and

(10) Rehabilitation technology.

(e) "State plan" means the state plan for independent living required by the federal rehabilitation act of 1973, as amended.

§18-10M-5. Eligibility for services.

Any individual with a significant disability, as defined in the state plan, is eligible for services that may be made available pursuant to this article.

§18-10M-6. Statewide independent living council.

(a) The West Virginia statewide independent living council is hereby established, as it has heretofore existed under the federal rehabilitation act, as a not-for-profit corporation which shall be organized to meet the requirements of the federal act: Provided, That the council may not be established as an entity within any agency or political subdivision of the state. The council shall be governed by a board of directors, consisting of the voting members of the council, as provided in this section. The composition of this board of directors, as well as the composition of the full council's membership, shall include a majority of members who are persons with disabilities, as
defined in the state plan, and a majority of members who are not employed by any agency of the state or center for independent living. The council's membership shall reflect balanced geographical representation, diverse backgrounds and the full range of disabilities recognized under the federal act, including physical, mental, cognitive, sensory and multiple.

(b) The council shall function as a partner with the division of rehabilitation services in the planning and provision of independent living services in the state. In conjunction with the division, the council shall develop, approve and submit to the proper federal authorities the state plan for independent living, as required by the federal act. The council shall monitor, review and evaluate the effectiveness of the implementation of the state plan.

(c) **Voting members.** — The council shall consist of twenty-four voting members as follows: One director of an independent living center, chosen by the directors of the independent living centers in the state; and twenty-three members appointed by the governor. The governor shall select appointments from among the nominations submitted by organizations representing a wide range of individuals with disabilities and other interested groups, as coordinated by the council, by and with the advice and consent of the Senate. These members may include other representatives from centers for independent living, parents and guardians of individuals with disabilities, advocates of individuals with disabilities, representatives from the business and educational sectors, representatives of organizations that provide services for individuals with disabilities and other interested individuals, as appropriate to the purpose of the council.

(d) **Nonvoting members.** — The membership of the council shall also include the following, non-voting, ex officio members, or their designees:
(1) The director of the division of rehabilitation services;

(2) The director of the office of behavioral health services within the department of health and human resources;

(3) The director of the West Virginia housing development fund;

(4) The president of the West Virginia association of rehabilitation facilities;

(5) The commissioner of the bureau of senior services; and

(6) The director of the office of special education programs and assurance in the department of education;

The nonvoting membership may also include additional representatives of groups represented on the board of directors.

(e) Terms of appointment. — Each appointed member of the council shall serve for a term of three years, except that a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed shall be appointed for the remainder of the unexpired term; and the terms of service of the members initially appointed shall be for such fewer number of years as will provide for the expiration of terms on a staggered basis, as specified by the governor. No member of the council may serve more than two consecutive full terms.

(f) Vacancies. — Any vacancy occurring in the appointed membership of the council shall be filled in the same manner as the original appointment. A vacancy does not affect the power of the remaining members to execute the duties of the council.
(g) Delegation. — The governor may delegate the authority to fill a vacancy to the remaining voting members of the council after initial appointments have been made.

(h) Duties. — The council shall:

1. In conjunction with the division of rehabilitation services, develop and sign the state plan for independent living;

2. Monitor, review and evaluate the implementation of the state plan;

3. Coordinate activities with the state rehabilitation council and other bodies that address the needs of specific disability populations and issues under other federal and state law;

4. Ensure that all regularly scheduled meetings of the council are open to the public and sufficient advance notice is provided; and

5. Submit to the federal funding agency such periodic reports as are required and keep such records and afford access to such records, as may be necessary to verify such reports.

(i) Staffing and resources. — The council may employ staff as necessary to perform the functions of the council, including an executive director, an administrative assistant and other staff as may be determined necessary by the council. The council shall supervise and evaluate staff. The council shall prepare, in conjunction with the division, a plan for the use of available resources as may be necessary to carry out the functions and duties of the council pursuant to this article, utilizing eligible federal funds, funds made available under this article and funds from other public and private sources. This resource plan shall, to the maximum extent possible, rely on the use of existing resources during the period of plan implementation.
Compensation and expenses. — The council may use resources that are available to it to reimburse members of the council for reasonable and necessary expenses incurred in the performance of their duties, including attending council meetings, and to pay reasonable compensation to any member of the council who is either not employed by the state or is not otherwise compensated by his or her employer for performance of duties associated with the council, up to fifty dollars per day.

§18-10M-7. State plan for independent living.

(a) The state plan shall direct the use of federal funds provided to the state under the federal act and appropriated by the Legislature to the division in a line item for this purpose, in addition to any state funds that may be appropriated to the division for the provision of independent living services. The state plan, and each subsequent plan or amendment thereto shall address the priorities set forth in the federal act for establishing a statewide program of independent living services, including a statewide network of centers for independent living. The state plan may be amended at any time at the agreement of the council and the division.

(b) The state plan, and each subsequent plan and any amendments thereto shall be presented to the legislative oversight commission on health and human resources accountability, created pursuant to article twenty-nine-e, chapter sixteen of this code, for review and consultation.

§18-10M-8. Funding and grants.

(a) Funds appropriated to the division for independent living services shall be administered by the division and may be used to fund any service or activity included in the state plan for independent living, including funding centers for independent living. In order to qualify for funding, a center for independent
living shall meet the definition and comply with the standards and indicators therefor, as established in the federal act.

(b) Subject to availability, the state plan may designate funds for purposes including, but not limited to, the following:

(1) To provide independent living services to eligible individuals with significant disabilities;

(2) To demonstrate ways to expand and improve independent living services;

(3) To support the operation of centers for independent living;

(4) To support activities to increase the capacities of centers for independent living to develop comprehensive approaches or systems for providing independent living services;

(5) To conduct studies and analyses, gather information, develop model policies and procedures and present information, approaches, strategies, findings, conclusions and recommendations to policymakers in order to enhance independent living services for individuals with disabilities;

(6) To train individuals with disabilities and individuals who provide services to them and other persons regarding the independent living philosophy; and

(7) To provide outreach to populations that are unserved or underserved by programs under this act, including minority groups and urban and rural populations.

As provided in the state plan, funds appropriated for the purposes of this article shall be utilized directly by the division
for the provision of independent living services or through grants or contracts, with the approval of the council, to agencies that meet the definition of and comply with the standards and indicators for centers for independent living set forth in the federal act.

CHAPTER 152

(Com. Sub. for H. B. 2209 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public employees insurance agency; prohibiting the conversion of accrued annual and sick leave for extended insurance coverage upon retirement for covered employees hired after a certain date; and exempting certain employees who are rehired from the prohibition.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-13. Payment of costs by employer and employee; spouse and dependent coverage; involuntary employee termination coverage; conversion of annual leave and sick leave authorized for health or retirement
benefits; authorization for retiree participation; continuation of health insurance for surviving dependents of deceased employees; requirement of new health plan, limiting employer contribution.

(a) Cost-sharing. — The director shall provide under any contract or contracts entered into under the provisions of this article that the costs of any group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans shall be paid by the employer and employee.

(b) Spouse and dependent coverage. — Each employee is entitled to have his or her spouse and dependents, as defined by the rules of the public employees insurance agency, included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage to which the employee is entitled to participate: Provided, That the spouse and dependent coverage is limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term “primary coverage” means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules governing the nature, discontinuance and resumption of any employee’s coverage for his or her spouse and dependents.

(c) Continuation after termination. — If an employee participating in the plan is terminated from employment involuntarily or in reduction of work force, the employee’s insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee and the employer shall continue to contribute the employer’s
share of plan premiums for the coverage. An employee discharged for misconduct shall not be eligible for extended benefits under this section. Coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued. If the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his or her prior termination, he or she shall not be considered a new enrollee and may not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(d) *Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan before July, one thousand nine hundred eighty-eight.* — Except as otherwise provided in subsection (g) of this section, when an employee participating in the plan, who elected to participate in the plan before the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: The insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, the insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement.
(e) **Conversion of accrued annual and sick leave for extended insurance coverage upon retirement for employees who elected to participate in the plan after June, one thousand nine hundred eighty-eight.** — Notwithstanding subsection (d) of this section, and except as otherwise provided in subsections (g) and (l) of this section when an employee participating in the plan who elected to participate in the plan on and after the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when the participating employee voluntarily retires as provided by law, that employee’s annual leave or sick leave, if any, shall be credited toward one half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) One additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; or (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by the retired employee if he or she elects the coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after the first day of July, one thousand nine hundred eighty-eight.

(f) **Increased retirement benefits for retired employees with accrued annual and sick leave.** — In the alternative to the extension of insurance coverage through premium payment
provided in subsections (d) and (e) of this section, the accrued
annual leave and sick leave of an employee participating in the
plan may be applied, on the basis of two days retirement service
credit for each one day of accrued annual and sick leave, toward
an increase in the employee’s retirement benefits with those
days constituting additional credited service in computation of
the benefits under any state retirement system. However, the
additional credited service shall not be used in meeting initial
eligibility for retirement criteria, but only as additional service
credited in excess thereof.

(g) Conversion of accrued annual and sick leave for
extended insurance coverage upon retirement for certain higher
education employees. — Except as otherwise provided in
subsection (l) of this section, when an employee, who is a
higher education full-time faculty member employed on an
annual contract basis other than for twelve months, is com-
pelled or required by law to retire before reaching the age of
sixty-five, or when such a participating employee voluntarily
retires as provided by law, that employee’s insurance coverage,
as provided by this article, shall be extended according to the
following formulae: The insurance coverage for a retired higher
education full-time faculty member, formerly employed on an
annual contract basis other than for twelve months, shall
continue beyond the effective date of his or her retirement one
additional year for each three and one-third years of teaching
service, as determined by uniform guidelines established by the
university of West Virginia board of trustees and the board of
directors of the state college system, for individual coverage, or
one additional year for each five years of teaching service for
“family” coverage.

(h) Any employee who retired prior to the twenty-first day
of April, one thousand nine hundred seventy-two, and who also
otherwise meets the conditions of the “retired employee”
definition in section two of this article, shall be eligible for
insurance coverage under the same terms and provisions of this
article. The retired employee’s premium contribution for any such coverage shall be established by the finance board.

(i) Retiree participation. — All retirees under the provisions of this article, including those defined in section two of this article; those retiring prior to the twenty-first day of April, one thousand nine hundred seventy-two; and those hereafter retiring are eligible to obtain health insurance coverage. The retired employee’s premium contribution for the coverage shall be established by the finance board.

(j) Surviving spouse and dependent participation. — A surviving spouse and dependents of a deceased employee, who was either an active or retired employee participating in the plan just prior to his or her death, are entitled to be included in any group insurance coverage provided under this article to which the deceased employee was entitled, and the spouse and dependents shall bear the premium cost of the insurance coverage. The finance board shall establish the premium cost of the coverage.

(k) Elected officials. — In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature’s intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of those positions preclude the arising or accumulation of any leave, so as to be thereafter usable as premium paying credits for which the officials may claim extended insurance benefits.

(l) Participation of certain former employees. — An employee, eligible for coverage under the provisions of this article who has twenty years of service with any agency or entity participating in the public employees insurance program or who has been covered by the public employees insurance
program for twenty years may, upon leaving employment with
a participating agency or entity, continue to be covered by the
program if the employee pays one hundred and five percent of
the cost of retiree coverage: Provided, That the employee shall
elect to continue coverage under this subsection within two
years of the date the employment with a participating agency or
entity is terminated.

(m) Prohibition on conversion of accrued annual and sick
leave for extended coverage upon retirement for new employees
who elect to participate in the plan after June, two thousand
one. — Any employee hired on or after the first day of July, two
thousand one who elects to participate in the plan may not
apply accrued annual or sick leave toward the cost of premiums
for extended insurance coverage upon his or her retirement.
This prohibition does not apply to the conversion of accrued
annual or sick leave for increased retirement benefits, as
authorized by this section: Provided, That any person who has
participated in the plan prior to the first day of July, two
thousand one, is not a new employee for purposes of this
subsection if he or she becomes re-employed with an employer
participating in the plan within two years following his or her
separation from employment and he or she elects to participate
in the plan upon his or her re-employment.

CHAPTER 153

(H. B. 3009 — By Delegates Beane, Browning and G. White)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
as amended; to amend and reenact section twenty-two, article three, chapter twenty-nine of said code; to amend and reenact section fifteen, article two, chapter thirty-three of said code; to amend and reenact sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of said chapter; to amend and reenact section five, article thirty-two of said chapter; and to amend said chapter by adding thereto a new article, designated article forty-three, all relating to the procedures for administering taxes and fees required to be paid or remitted to the commissioner of insurance; the tax on insurers pursuant to the fire prevention and control act; the commissioner's annual report to the governor on the condition of insurers; the filing of annual financial statements and premium tax returns; the computation and payment of taxes to the insurance commissioner; fire and casualty insurance premium tax; the surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments, certain retired teachers and the teachers retirement reserve fund; the premium tax imposed upon risk retention groups; the enactment of an insurance tax procedures act; the power of the commissioner to conduct hearings and impose penalties for failure to comply with tax statutes and rules; authority of the commissioner to bring or join suit; the obligation to file tax returns; imposition of penalties for taxpayer's failure to file or pay tax liability; the issuance of tax assessments; the right to hearing and appeal; the procedure for claiming tax refunds and credits; the imposition of interest on unpaid assessments; the allocation of payments; notice of overpayments and underpayments; and retroactive monetary relief for unconstitutional taxes.

Be it enacted by the Legislature of West Virginia:

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

Chapter

29. Miscellaneous Boards and Officers.
33. Insurance.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers' mutual fire insurance companies, shall pay to the state insurance commissioner annually on or before the first day of March, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the state insurance commissioner is paid by him or her into the treasury and credited to the state general revenue fund.

CHAPTER 33. INSURANCE.

Article

2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurers.
32. Risk Retention Act.
ARTICLE 2. INSURANCE COMMISSIONER.


The commissioner shall annually, on or before the first day of November, submit to the governor a report for the previous calendar year of his or her official acts, and of the condition of insurers doing business in this state, with a condensed statement of their reports to him or her, abstracts of all accounts rendered to any court by receivers of insolvent insurers, abstracts or reports to the commissioner by the receivers, together with a statement of all assessments, fees, taxes and related charges received from insurers and other licensees and paid by him or her into the state treasury.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

§33-3-14a. Additional premium tax.

§33-3-14c. Computation and payment of tax.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

*§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue fund created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before the first day of March, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before the first day of March of each year subject to the provisions of section

*Clerk's Note: This section was also amended by H. B. 3156 (Chapter 66), which passed subsequent to this act.
fourteen-c of this article, under the oath of its president or secretary, make a premium tax return for the previous calendar year, on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected and received by it during the previous calendar year on policies covering risks resident, located or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of section fourteen-c of this article, if any, less any adjustments to the gross amount of the direct premiums made during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under section fourteen-a of this article.

(b) There is created in the state treasury a special revenue fund, administered by the treasurer, designated the “insurance tax fund.” This fund is not part of the general revenue fund of the state. It consists of all taxes received by the commissioner not allocated to another fund, any appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(c) The treasurer shall dedicate and transfer from the insurance tax fund to the regional jail and correctional facility investment fund created under the provisions of section twenty-one, article six, chapter twelve of this code, on or before the tenth day of each month, an amount equal to one twelfth of the projected annual investment earnings to be paid and the capital invested to be returned, as certified to the treasurer by the investment management board: Provided, That the amount dedicated and transferred may not exceed twenty million dollars in any fiscal year. In the event there are insufficient funds
available in any month to transfer the amount required pursuant
to this subsection to the regional jail and correctional facility
investment fund, the deficiency shall be added to the amount
transferred in the next succeeding month in which revenues are
available to transfer the deficiency. Each month a lien on the
revenues generated from the insurance premium tax, the
annuity tax and the minimum tax, provided in this section and
sections fifteen and seventeen of this article, up to a maximum
amount equal to one twelfth of the projected annual principal
and return is granted to the investment management board to
secure the investment made with the regional jail and correc-
tional facility authority pursuant to section twenty, article six,
chapter twelve of this code. The treasurer shall, no later than the
last business day of each month, transfer amounts the treasurer
determines are not necessary for making refunds under this
article to meet the requirements of subsection (d), section
twenty-one, article six, chapter twelve of this code, to the credit
of the general revenue fund.

(d) The amendment to this section enacted during the
regular session of the Legislature in the year one thousand nine
hundred ninety-eight, is effective on the first day of July, one
thousand nine hundred ninety-eight.

§33-3-14a. Additional premium tax.

For the purpose of providing additional revenue for the
state general revenue fund, there is hereby levied and imposed,
in addition to the taxes imposed by section fourteen of this
article, an additional premium tax equal to one percent of
taxable premiums. Except as otherwise provided in this section,
all provisions of this article relating to the levy, imposition and
collection of the regular premium tax shall be applicable to the
levy, imposition and collection of the additional tax. All
moneys received from the additional tax imposed by this
section, less deductions allowed by this article for refunds and
for costs of administration, shall be received by the commis-
sioner and shall be paid by him or her into the state treasury for
the benefit of the state fund.

§33-3-14c. Computation and payment of tax.

The taxes levied hereunder shall be due and payable in
quarterly installments on or before the twenty-fifth day of the
month succeeding the end of the quarter in which they accrue,
except for the fourth quarter, for which taxes shall be due and
payable on or before the first day of March of the succeeding
year. The insurer subject to making the payments shall, by the
due date, prepare an estimate of the tax based on the estimated
amount of taxable premium during the preceding quarter, and
mail the estimate together with a remittance of the amount of
tax to the office of the commissioner.

§33-3-14d. Additional fire and casualty insurance premium tax;
allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for
municipal policemen's and firemen's pension and relief funds
and the teachers retirement system reserve fund and for
volunteer and part volunteer fire companies and departments,
there is hereby levied and imposed an additional premium tax
equal to one percent of taxable premiums for fire insurance and
casualty insurance policies. For purposes of this section,
casualty insurance does not include insurance on the life of a
debtor pursuant to or in connection with a specific loan or other
credit transaction or insurance on a debtor to provide indemnity
for payments becoming due on a specific loan or other credit
transaction while the debtor is disabled as defined in the policy.

All moneys collected from this additional tax shall be
received by the commissioner and paid by him or her into a
special account in the state treasury, designated the municipal
pensions and protection fund. The net proceeds of this tax after
appropriation thereof by the Legislature is distributed in
accordance with the provisions of this section.

(b)(1) Before the first day of August of each calendar year,
the treasurer of each municipality in which a municipal
policemen's or firemen's pension and relief fund has been
established shall report to the state treasurer the average
monthly number of members who worked at least one hundred
hours per month and the average monthly number of retired
members of municipal policemen's or firemen's pension
systems during the preceding fiscal year.

(2) Before the first day of September of each calendar year,
the state treasurer shall allocate and authorize for distribution
the revenues in the municipal pensions and protection fund
which were collected during the preceding calendar year for the
purposes set forth in this section. Sixty-five percent of the
revenues are allocated to municipal policemen's and firemen's
pension and relief funds; twenty-five percent of the revenues
shall be allocated to volunteer and part volunteer fire companies
and departments; and ten percent of such allocated revenues are
allocated to the teachers retirement system reserve fund created
by section eighteen, article seven-a, chapter eighteen of this
code: Provided, That in any year the actuarial report required
by section twenty, article twenty-two, chapter eight of this code
indicates no actuarial deficiency in the municipal policemen's
or firemen's pension and relief fund, no revenues may be
allocated from the municipal pensions and protection fund to
that fund. The revenues from the municipal pensions and
protection fund shall then be allocated to all other pension funds
which have an actuarial deficiency.

(3) The moneys, and the interest earned thereon, in the
municipal pensions and protection fund allocated to volunteer
and part volunteer fire companies and departments shall be
allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipality's average monthly number of members who worked at least one hundred hours per month during the preceding fiscal year. On and after the first day of July, one thousand nine hundred ninety-seven, from the growth in any moneys collected pursuant to the tax imposed by this section there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based upon the corresponding municipalities average number of members who worked at least one hundred hours per month and average monthly number of retired members. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, from the tax collected during the fiscal year for which the allocation is being made. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections sixteen through twenty-eight, inclusive, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and departments.
(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of the fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments, certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after the first day of July, one thousand nine hundred ninety-two, on the policyholder of any fire insurance policy or casualty insurance policy issued by any insurer, authorized or unauthorized, or by any risk retention group, a policy surcharge equal to one percent of the taxable premium for each such policy. For purposes of this section, casualty insurance may not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. The policy surcharge may not
be subject to premium taxes, agent commissions or any other
assessment against premiums.

(b) The policy surcharge shall be collected and remitted to
the commissioner by the insurer or in the case of excess lines
coverage, by the resident excess lines broker, or if the policy is
issued by a risk retention group, by the risk retention group.
The amount required to be collected under this section shall be
remitted to the commissioner on a quarterly basis on or before
the twenty-fifth day of the month succeeding the end of the
quarter in which they are collected, except for the fourth quarter
for which the surcharge shall be remitted on or before the first
day of March of the succeeding year.

(c) Any person failing or refusing to collect and remit to the
commissioner any policy surcharge and whose surcharge
payments are not postmarked by the due dates for quarterly
filing is liable for a civil penalty of up to one hundred dollars
for each day of delinquency, to be assessed by the commis-
sioner. The commissioner may suspend the insurer, broker or
risk retention group until all surcharge payments and penalties
are remitted in full to the commissioner.

(d) One half of all money from the policy surcharge shall be
collected by the commissioner who shall disburse the money
received from the surcharge into a special account in the state
treasury, designated the “fire protection fund.” The net proceeds
of this portion of the tax, and the interest thereon after appropi-
ation by the Legislature shall be distributed quarterly on the
first day of the months of January, April, July and October to
each volunteer fire company or department on an equal share
basis by the state treasurer.

(1) Before each distribution date, the state fire marshal shall
report to the state treasurer the names and addresses of all
volunteer and part volunteer fire companies and departments
within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(2) The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

(e) The allocation, distribution and use of revenues provided in the fire protection fund are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 32. RISK RETENTION ACT.

§33-32-5. Tax on premiums collected.

(a) Each risk retention group shall pay to the commissioner, on the first day of March of each year, a tax at the rate of two percent of the taxable premiums on policies or contracts of insurance covering property or risks in this state and on risk and property situated elsewhere upon which no premium tax is otherwise paid during the previous year. Each risk retention group shall also be subject to the additional premium taxes levied by sections fourteen-a and fourteen-d of article three of this chapter and the examination assessment fee levied by section nine of article two of this chapter.

(b) The taxes provided for in this section shall constitute all taxes collectible under the laws of this state from any risk retention group, and no other premium tax or other taxes shall be levied or collected from any risk retention group by the state.
or any county, city or municipality within this state, except ad
valorem taxes. Each risk retention group shall be subject to the
same interests, additions, fines and penalties for nonpayment as
are generally applicable to insurers.

(c) To the extent that a risk retention group utilizes insur-
ance agents, each agent shall keep a complete and separate
record of all policies procured from each risk retention group,
which record shall be open to examination by the commis-
sioner, as provided in section nine, article two of this chapter.
These records shall, for each policy and each kind of insurance
provided thereunder, include the following:

(1) The limit of liability;

(2) The time period covered;

(3) The effective date;

(4) The name of the risk retention group which issued the
policy;

(5) The gross premium charged; and

(6) The amount of return premiums, if any.

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-1. Short title.
§33-43-5. Limitation on actions.
§33-43-6. Returns.
§33-43-7. Penalties.
§33-43-9. Hearing and appeal; judicial review.
§33-43-10. Refunds and credits.
§33-43-11. Interest.
§33-43-1. Short title.

1 This article shall be known and may be referred to as the
2 “Insurance Tax Procedures Act.”


1 (a) The provisions of this article applies to all taxes,
2 surcharges, assessments, penalties and fees, however denomi-
3 nated, which are remitted to the commissioner.

4 (b) This article supersedes any provisions in this code
5 which concern the matters addressed in this article, but only to
6 the extent that those other provisions are inconsistent with this
7 article.


1 For the purposes of this article and where not otherwise
2 defined in this chapter:

3 (a) “Assessment” means a written notice by the commis-
4 sioner of an amount due by a taxpayer for payment of any tax,
5 fee, penalty or related charge administered under this article.

6 (b) “Days” means calendar days.

7 (c) “Filing date” for a return means the date prescribed by
8 the Legislature for the filing of a return, or if no date is pre-
9 scribed, the payment date for the tax which is the subject of the
10 return.
(d) "Final decision" means a decision for which the availability of an appeal has been exhausted, either because the time for filing a petition has elapsed or because the petition has been denied.

(e) "Payment date" for a tax means the date prescribed by the Legislature for the payment of the tax, or if no date is prescribed, on the first day of March next following the end of the taxable year for the tax.

(f) "Related charges" includes fees, and additions and interest called for by this article.

(g) "Surcharge" means a tax payable by a policyholder but collected and remitted to the commissioner by the insurer.

(h) "Tax" means any tax to which this article applies.

(i) "Taxable premium" means the amount of the gross direct premiums, annuity considerations or dividends on participating policies applied in reduction of premiums less premiums returned to policyholders due to cancellation of policies.

(j) "Taxpayer" includes any legal entity which is liable for the remittance of a tax to the commissioner in a particular taxable year, and any legal entity that is required to file a return under this article.


(a) All powers granted to the commissioner by this article are in addition to those powers granted to the commissioner elsewhere in this code, and no provision of this article may be construed to eliminate or diminish the other powers.
(b) The commissioner may prescribe any forms as he or she considers necessary for the fair, uniform and efficient administration of taxes. All forms now used by the commissioner shall be prescribed until the commissioner requires otherwise.

(c) The commissioner may propose rules for legislation approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which he or she considers necessary for the fair, uniform and efficient administration of taxes. All currently existing rules remain in effect until amended or repealed.

(d) For the purpose of ascertaining the application of this article to a taxpayer, the commissioner may:

(1) Examine any books, papers, records, memoranda or property of the taxpayer, legal entity, or any other person which may be relevant in determining its tax liability, compliance or taxpayer status;

(2) Require the attendance for the purpose of giving testimony of the taxpayer or legal entity, or of an employee, officer or agent of the taxpayer or legal entity who reasonably is believed to possess knowledge which may be relevant in determining its tax liability, compliance or taxpayer status;

(3) Exercise any of the powers conferred by sections four through eight of article two of this chapter.

(e) If the commissioner determines, after notice and hearing, that a person has failed or refused to comply with the provisions of this article, or of any legislative rule proposed by the commissioner and approved by the Legislature pursuant to this article, the commissioner may order that the person comply with the provisions and that the person take any other steps as are reasonably necessary to allow the provisions to be enforced. If the person holds a license issued by the commissioner, the
The commissioner may revoke that license upon the person's failure or refusal to obey an order issued under this subsection or in the commissioner's discretion may in the alternative assess a penalty against the person in an amount up to five thousand dollars per occurrence.

(f) The commissioner has exclusive authority to bring or join suit in a court of competent jurisdiction, or to pursue any other action allowed by law, to enforce the provisions of this article, or of legislative rules proposed pursuant to this article and approved by the Legislature, or to enforce any order, subpoena or other directive issued by the commissioner pursuant to this article to best promote the fair, uniform and efficient administration of taxes.

§33-43-5. Limitation on actions.

The commissioner has exclusive authority to bring or join suit in a court of competent jurisdiction, or to pursue any other action allowed by law, to obtain the payment of taxes and related charges: Provided, That the commissioner must so act within ten years following the date upon which the assessment or order establishing the taxpayer's liability becomes final.

§33-43-6. Returns.

(a) Any person who is subject to a tax in a given taxable year shall file a return for that tax and that taxable year, even if the person has no tax liability for that taxable year.

(1) Each return shall be filed by the applicable filing date. The commissioner at his or her discretion may accept a return after the filing date.

(2) Should a taxpayer file more than one return for the same tax, only the return last filed shall be effective. The commis-
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9  sioner at his or her discretion may approve the withdrawal of a
10  return by the taxpayer.

11  (b) Each return shall be executed by the taxpayer in a
12  manner prescribed by the commissioner. Each return so
13  executed shall constitute a sworn statement by the signatory
14  that to the best of his or her knowledge and belief, the informa-
15  tion provided in the return or in any supporting materials which
16  accompany the return is true and accurate.

17  (c) All returns shall be prepared on forms prescribed by the
18  commissioner. If no form has been prescribed for a particular
19  tax, the return may be in a form chosen by the taxpayer but
20  shall clearly set forth the following information: The taxpayer’s
21  name, address and telephone number; the identification number
22  used by the taxpayer in filing federal income tax returns; the tax
23  and taxable year to which the return applies; and all information
24  used to calculate the tax liability of the taxpayer.

25  (d) For purposes of this article, a return is not regarded as
26  filed if:

27  (1) It is not filed by the applicable filing date, unless the
28  commissioner accepts the return; or

29  (2) It has not been received by the commissioner; or

30  (3) It has not been properly executed by the taxpayer; or

31  (4) It is not in the proper form; or

32  (5) It is incomplete or inaccurate in any material respect; or

33  (6) It is not accompanied by supporting material required
34  by the commissioner; or
(7) It is withdrawn by the taxpayer with the approval of the commissioner; or

(8) It is not accompanied by the payment for any tax due.

e) If a tax is to be paid in installments, the taxpayer shall file an appropriate return for each period for which an installment payment is calculated, even if the taxpayer is not required to make an installment payment for that period. The returns shall satisfy all requirements established for annual returns by this section except that the filing date for an installment return is the date prescribed for the installment payment for the period described by the return.

f) If a taxpayer has failed to file a return by the applicable filing date, or has filed a false or fraudulent return, the commissioner may use any information which is available to him or her to determine the taxpayer’s tax liability: Provided, That a determination of tax liability by the commissioner pursuant to this subsection does not relieve the taxpayer of the duty to file a true, accurate and complete return and does not reduce or preclude any penalty based upon the taxpayer’s failure to file.

g) A taxpayer to whom a credit has been issued may apply the credit as payment for any like tax due to be remitted by the taxpayer upon written notice to the commissioner stating the amount of the credit to be so applied.

§33-43-7. Penalties.

(a) If any taxpayer fails to file a return by the applicable filing date, then for each day throughout which the taxpayer fails to file, the taxpayer is liable for a penalty of twenty-five dollars.

(b) If a taxpayer fails to pay a tax liability in full by the applicable payment date, then for each day throughout which a
portion of the liability remains unpaid, the taxpayer is liable for a penalty in an amount equal to one percent of the unpaid portion: Provided, That the sum of the penalties imposed under this subsection may not exceed one hundred percent of the tax liability.

(c) A penalty imposed under this section may be waived or reduced by the commissioner if the taxpayer establishes, to the satisfaction of the commissioner, that the failure upon which the penalty is based was not, in whole or in part, willful or due to the neglect of the taxpayer.

d) The assessment of a penalty under this section is automatic unless a waiver or reduction of the penalty is agreed to by the commissioner in writing.


(a) The commissioner may issue assessments for tax liabilities and related charges, or any portions thereof, which are due and payable but unpaid. At any time before an assessment becomes final, the commissioner may amend the assessment, in whole or in part. Except as otherwise provided in this article, an assessment which is amended by the commissioner shall be regarded as a new assessment.

(b) The commissioner shall give the taxpayer notice of every assessment or amendment thereto. The date upon which the notice is sent to the taxpayer shall be regarded as the date upon which the assessment is issued.

(c) The notice of assessment shall specify the amount of each tax liability or related charge which is the subject of the assessment: Provided, That the notice may list interest and penalties which accrue or are imposed from the time that the assessment is issued to the time that the assessment is paid.
(d) Notwithstanding any other provisions of this article, assessments may be issued only within the following time periods:

1. For tax liabilities, if the taxpayer has filed a return for the tax and taxable year at issue, within three years of the filing date for the return or the date upon which the return actually was filed, whichever comes later;

2. For fees, within three years of the date prescribed for payment of the fee;

3. For penalties based upon a failure to pay a tax, at any time.

(e) The commissioner shall, within ninety days of a written request by a taxpayer, issue an assessment: Provided, That the commissioner may refuse to issue an assessment until the taxpayer has provided the commissioner with all information necessary to determine or verify the taxpayer's outstanding liabilities for taxes and related charges.

(f) If the taxpayer does not timely request a hearing on an assessment pursuant to section nine of this article, the assessment shall become final. A final assessment is conclusive of the liability of the taxpayer and is not subject to either administrative or judicial review.

§33-43-9. Hearing and appeal; judicial review.

(a) Within sixty days of the issuance of an assessment or imposition of a penalty, a taxpayer may request a hearing before the commissioner on the amount or validity of the assessment or penalty. Except as otherwise provided in this article or in legislative rules proposed and approved by the Legislature thereto, the hearings are subject to the requirements
established in sections thirteen and fourteen, article two of this chapter.

(b) A request for a hearing shall be in writing and shall set forth with reasonable particularity the taxpayer’s objections to the assessment or penalty and the factual basis therefore. At any time prior to the hearing, the commissioner may allow a taxpayer to amend the request.

(c) The taxpayer’s request shall be executed by the taxpayer in a manner prescribed by the commissioner, and a request so executed shall constitute a sworn statement by the signatory that to the best of his or her knowledge and belief, the information provided in the request is true and accurate.

(d) Assessments issued by the commissioner shall be presumed correct, and the taxpayer shall bear the burden of proving, by a preponderance of the evidence, that the assessment is incorrect or contrary to law.

(e) If the taxpayer does not timely appeal the commissioner’s order, that order shall become final as of the expiration of the period during which the taxpayer may have brought an appeal. Upon becoming final, an order shall be conclusive of the liability of the taxpayer and is not subject to either administrative or judicial review.

(f) An agreed order signed by the taxpayer and the commissioner is final and shall constitute a waiver of the taxpayer’s right to a hearing or appeal under this chapter.

§33-43-10. Refunds and credits.

(a) This section is the sole method of receiving a refund or credit for any tax or related charge administered under this article.
(b) Any taxpayer claiming to be due a refund or credit for overpayment of any tax or related charge administered under this article may, within five years from the date of the filing of the return under which the tax was imposed or within four years from the date the tax was paid, whichever term expires later, file with the commissioner a petition in writing requesting a refund of the tax or any part thereof:

(1) If the petition and the proofs filed in support thereof persuades the commissioner that the payment of the tax or related charges or any part thereof was improperly required, he or she shall refund or issue a credit to the taxpayer for the improper amounts;

(2) If the commissioner is in doubt as to whether or not the taxes or related charges were proper, or if the commissioner is of the opinion that the payment of the tax collected, or any part thereof was proper, then the commissioner shall within thirty days hold a hearing to determine the issue;

(3) If a taxpayer is considered to be due a credit or refund, the commissioner shall, if the amount exceeds one thousand dollars, at his or her discretion, pay the amount in equal, annual installments over not more than three years. The commissioner may issue a credit against future taxes in lieu of a refund payment, whether lump sum or installment;

(4) The payment of refunds or issuance of credits to a taxpayer pursuant to this section shall constitute a complete and final settlement of all of the taxpayer’s claims for which the refunds or credits are paid. No cause of action or liability, whether for damages, attorney’s fees, costs or of any other nature, shall arise against the commissioner or against his or her agents for administering or litigating the constitutionality of a tax subsequently determined to be unconstitutional.
§33-43-11. Interest.

A taxpayer shall be liable for interest on any unpaid final assessment or penalty or portion thereof: Provided, That interest may not be charged on interest. Interest shall be calculated using the annual rates which are established by the tax commissioner pursuant to section seventeen-a of article ten, chapter eleven of this code and shall accrue daily.


(a) Payments made by a taxpayer, other than installment payments of a tax liability which is required to be paid in installments, shall be allocated to the taxpayer’s outstanding liabilities as follows:

(1) First, to any assessment which has become final;

(2) Next, to any fee which has not yet been assessed;

(3) Next, to any tax or related charge which has not yet been assessed;

(4) Finally, to any assessment which has not yet become final.


(a) Upon discovering that a taxpayer has made payments in excess of the taxpayer’s outstanding liabilities, the commissioner shall give notice of the overpayment to the taxpayer.

(b) Payments by a taxpayer in excess of the amounts required to satisfy the taxpayer’s liabilities for taxes and related charges shall give rise to a credit against the taxpayer’s future liabilities unless the taxpayer, within thirty days of receiving the notice, either requests a refund under this article and is granted the refund, or establishes to the satisfaction of the
commissioner that no future liabilities will be incurred by the taxpayer.

(c) Upon discovering that a taxpayer has made payments less than the taxpayer’s outstanding liabilities, or that the taxpayer has made no payments, the commissioner shall give notice of the underpayment to the taxpayer, which notice will be considered an assessment of the amount due.


(a) The remedies provided by this article are exclusive and shall be in lieu of any and all remedies provided by common law or by other provisions of this code.

(b) Retroactive monetary relief for an unconstitutional tax shall be granted only at the express order of a court of competent jurisdiction which appears in a final decision of that court. Notwithstanding any other provision of this code, a final decision ordering retroactive monetary relief may not be considered to override any statute of limitations contained within this article, or to require relief for any claim which is res judicata.

(c) Retroactive monetary relief shall comprise only a refund of the unconstitutional tax, or of the portion thereof that the court has ordered refunded, which actually has been paid by the taxpayer, together with any penalties or interest which are based upon the taxpayer’s failure to pay the unconstitutional tax and which actually have been paid by the taxpayer.

(1) Except as otherwise provided in this section, retroactive monetary relief shall be paid to the taxpayer in a lump sum within one hundred eighty days of the final decision which orders the relief.

(2) If the amount of retroactive monetary relief due to any individual taxpayer exceeds one thousand dollars or the aggregate amount of the relief due to all taxpayers exceeds one hundred thousand dollars, the commissioner at his or her
discretion may pay all refunds issued pursuant to the final decision in equal, annual installments over not more than three years. For purposes of this subsection, a year shall be a period of twelve calendar months measured from the date upon which the final decision which orders the relief is entered.

(3) With the approval of the taxpayer, the commissioner may issue a credit against future taxes in lieu of a refund payment due pursuant to this section, whether lump sum or installment.

(d) The payment of refunds or issuance of credits to a taxpayer pursuant to this section shall constitute a complete and final settlement of all of the taxpayer’s claims which are based upon the unconstitutional tax for which the refunds are paid or the credits issued. No cause of action or liability, whether for damages, attorney’s fees, costs or of any other nature, shall arise against the commissioner or against his or her agents for administering or litigating the constitutionality of a tax subsequently determined to be unconstitutional.

§33-43-15. Taxes collected on behalf of the commissioner.

When a person is required to collect a tax or surcharge from another and remit the amount thus collected to the commissioner, the moneys collected are considered to be held by that person in trust for the state of West Virginia. With respect to the filing of returns, assessments and interest, taxes that are collected by a person to be remitted to the commissioner are treated as would a tax paid directly by that person to the commissioner. The person collecting the tax shall return to the policyholder or person paying the tax or surcharge any refund made for overpayment of the amount collected.
AN ACT to amend article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to associations; and providing that all associations be bona fide.

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

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

ARTICLE 1. DEFINITIONS.


"Association" means, as used in this chapter and corresponding rules, a bona fide association which has been actively in existence for at least five years; has been formed and maintained in good faith for purposes other than obtaining insurance; does not condition membership in the association on any health status-related factor relating to an individual; makes accident and sickness insurance offered through the association available to all members regardless of any health status-related factor relating to members or individuals eligible for coverage through a member; does not make accident and sickness
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; and to amend and reenact section four, article twenty-four of said chapter, all relating to examination of persons transacting insurance in the state; and requiring examination of domestic insurers and hospital, medical, dental and health service corporations every five years with discretion to perform examinations more frequently.

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; and that section four, article twenty-four of said chapter be amended and reenacted, all to read as follows:

Article
2. Insurance Commissioner.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

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 considered 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;
"Department" means the department of insurance of this state; and "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.

The commissioner or his or her examiners may conduct an examination under this section of any company as often as the commissioner in his or her discretion considers appropriate. The commissioner or his or her examiners shall at least once every five 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.

The commissioner or his or her 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, the reports may only be accepted if:

(1) 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

(2) 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 an accredited state
insurance department and who, after a review of the examina-
tion work papers and report, state under oath that the examina-
tion 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
the times as he or she considers 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 or her 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 the
examination.

(h) In addition to conducting an examination, the commis-
sioner or his or her examiners may, as the commissioner
considers 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 considers neces-
sary.

(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 or her 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
consider 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) of this subsection
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 or her 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 examination, 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
(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 or her 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;

(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, consider 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.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(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;

(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 opportunity of not more than ten days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner 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 the 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 submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) 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 investigatory proceeding as necessary for the resolution of any inconsistencies, 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 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 considered relevant to the investigation 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 commis-
sioner 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;

(3) 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.

(1) 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 regula-
tory 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 examina-
tion, 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;
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313 (3) An investment owner in shares of regulated diversified investment companies; or

315 (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed;

317 (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.

324 (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:

334 (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 the examination, analysis or review calculated as hereinbefore provided;

338 (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 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 or her 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 examination 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 companies, 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 or her 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 or her 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 or her 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 prevail-
ing party in a civil cause of action for libel, slander or any other
relevant tort arising out of activities in carrying out the provi-
sions 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.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SER-
VICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is
hereby declared to be a scientific, nonprofit institution and
exempt from the payment of all property and other taxes. Every
corporation, to the same extent the provisions are applicable to
insurers transacting similar kinds of insurance and not inconsis-
tent with the provisions of this article, shall be governed by and
be subject to the provisions as hereinbelow indicated, of the
following articles of this chapter: Article two (insurance
commissioner); article four (general provisions), except that
section sixteen of said article shall not be applicable thereto;
section thirty-four, article six (fee for form and rate filing);
article six-c (guaranteed loss ratio); article seven (assets and

*Clerk’s Note: This section was also amended by S. B. 513 (Chapter 163), which
passed subsequent to this act.
liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent’s license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company
systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

CHAPTER 156

(H. B. 2823 — By Delegate Beane)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to empowering the insurance commissioner, by order, to suspend and replace deadlines for steps in the claims settlement process that are imposed by legislative rule.

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

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-10a. Insurance emergencies — suspension of deadlines.

Upon finding that an insurance emergency has occurred, the commissioner, by order, may suspend any deadlines established by rule that apply to actions taken in the course of evaluating or settling claims and, may establish new deadlines in place of those that have been suspended. For purposes of this section, "insurance emergency" means an event, either natural or man-made, which in the opinion of the commissioner is reasonably likely to produce a volume of claims, for a particular place and time, that significantly exceeds the number of claims normally arising in that place and for that time. The commissioner shall limit the order to accommodate the anticipated increase in claims by specifying the geographic area in which claims to which the new deadlines apply arise, the time period during which the claims arise, the cause or nature of the claims, the relative priority of the claims or other characteristics of the claims that the commissioner considers appropriate.
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 insurance; insurers; premium taxes; credits against tax; and defining certain terms.

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.

1 (a) If the annual statement of any insurer covering a calendar year shows it to have investments at the close of the year in West Virginia securities, of at least twenty-five percent of its admitted assets, it is entitled to a credit against the premium tax levied by sections fourteen and fourteen-a of this article in an amount equal to one hundred percent of the tax for the calendar year: Provided, That the insurer proves to the satisfaction of the commissioner that it employs less than twenty full-time employees, has gross direct premiums of less than ten million dollars and derives a minimum of fifty percent of its gross direct premiums from insurance provided to under-served areas of West Virginia.

13 (b) As used in this section:

14 (1) “Full-time employees” means all elected officers, all full-time employees, all part-time employees each counted as one-half full-time employee equivalents and all full and part-time equivalent employees of affiliated companies within an insurance holding company system providing any type of service by contract or by any other arrangement;
(2) "Underserved areas" means those counties of the state for which the insurer demonstrates to the satisfaction of the commissioner that consumers in that county have an inadequate choice of insurance providers;

(3) "West Virginia securities" means real estate situate in this state; bonds or interest-bearing notes or obligations of this state; and 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; revenue bonds issued by any West Virginia state agency, board, department or commission authorized to issue such bonds by the laws of this state; and cash balances in regularly established accounts in West Virginia state banks and reflected as an asset in such annual statement; provided that the amount of such cash shall be calculated based on fifty percent of the average quarterly balance of such accounts and provided further that such cash may make up no more than forty percent of the insurer's investments in West Virginia securities.

CHAPTER 158

(S. B. 504 — By Senators Minard and Kessler)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections four and twenty, article one, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, article three of said chapter; to amend and reenact section one of said article; and to further
amend said chapter by adding thereto a new article, designated article forty-four, all relating to the remedies available to West Virginia residents harmed by unauthorized insurers; defining the unlawful transaction of insurance; establishing the method for service of process on unauthorized insurers; providing for injunctive relief; providing for administrative relief; providing for civil relief; including payment of interest, restitution and punitive damages; establishing criminal penalties; bond requirements; requirements for proof of federal regulation; establishing procedures for collection and distribution of restitution to West Virginia residents harmed by unauthorized insurers; procedure for enforcement of foreign decrees; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Licensing, Fees and Taxation of Insurers.

44. Unauthorized Insurers Act.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

1 (a) No person may act as an insurer and no insurer may transact insurance in West Virginia except as authorized by a valid license issued by the commissioner, except as to the transactions as are expressly otherwise provided for in this chapter.
(b) No license may be required for an insurer, formerly holding a valid license, to enable it to investigate and settle losses under its policies lawfully written in West Virginia while the license was in effect, or to liquidate the assets and liabilities of the insurer as may have resulted from its former authorized operations in West Virginia: Provided, That nothing herein allows an insurer to issue new policies or renew policies of insurance or collect premiums on those policies unless the insurer is authorized by a valid license issued by the commissioner, except as to the transactions that are otherwise provided for in this chapter.

(c) An insurer not transacting new insurance business in West Virginia but collecting premiums on and servicing of policies in force as to residents of or risks located in West Virginia, and where the policies were originally issued on nonresidents of or risks located outside of this state, is transacting insurance in West Virginia for the purpose of premium and annuity tax requirements but is not required to have a license therefor.

(d) A domestic insurer or a foreign insurer from offices or by personnel or facilities located in this state may not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting license granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

(e) Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section shall be subject to the provisions set forth in article forty-four of this chapter.

ARTICLE 44. UNAUTHORIZED INSURERS ACT.
§33-44-1. Short title.

This article may be cited as the “Unauthorized Insurers Act”.

§33-44-2. Purpose of enactment of provisions regarding unauthorized insurers.

The purpose of this article is to subject certain persons and insurers to the jurisdiction of the commissioner and to the courts of this state in suits by or on behalf of the state. The Legislature declares that it is concerned with the protection of residents of this state against unscrupulous acts by insurers not authorized to transact an insurance business in this state. It is the intent of the Legislature to maintain fair and honest insurance markets, to protect authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and to protect against the evasion of the insurance regulatory laws of this state. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts
of foreign jurisdictions for the purpose of enforcing the
insurance laws of this state for the protection of our citizens.
The Legislature declares that it is also a subject of concern that
many residents of this state hold policies of insurance issued or
delivered in this state by insurers not licensed to transact
insurance in this state, thus presenting to the residents the often
insurmountable obstacle of resorting to distant fora for the
purpose of asserting legal rights under these policies. In
furtherance of the state interest, the Legislature herein provides
a method of substituted service of process upon the insurers and
declares that in so doing it exercises its powers to protect its
residents and to define, for the purpose of this article, what
constitutes transacting insurance in this state.

§33-44-3. Definitions.

(a) “Administrator” or “third-party administrator” means,
as used in this article unless otherwise indicated, a person who
for residents of this state, or for residents of another jurisdiction
from a place of business in this state, performs administrative
functions including claims administration or payment, market-
ing, premium accounting, premium billing, coverage verifica-
tion, underwriting authority or certificate issuance in regard to
insurance.

(b) “Assist” means to aid, counsel, represent, opine,
administer or, in any capacity, to help another.

(c) “Commissioner” means the insurance commissioner for
the state of West Virginia.

(d) “Effectuating” means to bring about; to effect.

(e) “Foreign decree” means any decree or order of a court
located in a reciprocal state or other state including a court of
the United States located therein, against any insurer incorpo-
rated or authorized to do business in this state or against any
(f) "Insurance" is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies.

(g) "Insured" means, as used in this article unless otherwise indicated, any individual, member, named insured, beneficiary, subscriber or group who has obtained insurance from an unauthorized insurer or who is insured under a contract of insurance obtained from an unauthorized insurer.

(h) "Insurer" means, as used in this article unless otherwise indicated, any person engaged in the transaction of insurance.

(i) "Negotiation" means, as used in this article unless otherwise indicated, the deliberation, discussion or conference upon the terms of a proposed agreement; it is that which passes between parties or their agents in the course of or incident to the making of a contract; to conduct communications or conferences with a view to reaching an agreement.

(j) "Person" means, as used in this article unless otherwise indicated, any natural person or entity, including, but not limited to, individuals, partnerships, associations, bona fide associations, trusts, trustees, companies, insurers, unauthorized insurers, organizations, societies, reciprocals, syndicates, administrators, third-party administrators, agents, producers, advertisers, customer service representatives, promoters, officers, directors, lawyers, incorporators or any other legal entity.

(k) "Principal place of business" means the single state in which the policy for the direction, control and coordination of the operations of the insurer as a whole are primarily exercised, with consideration being given to, but not limited to:
(1) The state in which the primary executive and administrative headquarters of the entity is located;

(2) The state in which the principal office of the chief executive officer of the entity is located;

(3) The state in which the board of directors (or similar governing body) of the entity conducts the majority of its meetings;

(4) The state in which the executive or management committee of the board of directors (or similar governing body) of the entity conducts the majority of its meetings; and

(5) The state from which the management of the overall operations of the entity is directed.

(1) “Procure” means to cause a thing to be done, to instigate, contrive, bring about, effect or cause; to persuade, induce or prevail upon; it is the act of obtaining, attainment or acquisition.

(m) “Qualified party” means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(n) “Reciprocal state” means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders issued by courts located in the states or territories of the United States, against any insurer incorporated or authorized to do business in such state or territory or any unauthorized insurer with its principal place of business in such state or territory.

(o) “Solicitation” and “solicit” mean attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company, including without
limitation, providing rate comparisons of various insurers based on information provided by the person.

(p) "Transaction of insurance" means that for purposes of this article, any of the following acts in this state effected by mail or otherwise is considered to constitute the transaction of an insurance business in or from this state:

(1) The making of or proposing to make an insurance contract;

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(3) The taking or receiving of an application for insurance;

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration required for obtaining or renewing insurance;

(5) The issuance or delivery in this state of certificates or contacts of insurance to residents of this state or to persons authorized to do business in this state;

(6) The solicitation, negotiation, procurement or effectuation of insurance or renewals thereof;

(7) The dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, the fixing of rates or investigation or adjustment of claims or losses or the transaction of matters subsequent to effectuation of the contract and arising out of it, or any other manner of representing or assisting a person or insurer in the transaction of insurance with respect to any risk or exposure located or to be performed in this state;
(8) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;

(9) The offering of insurance or the transacting of insurance business; or

(10) Offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

(q) "Unauthorized insurer" means a person or insurer engaged in the transaction of insurance without a license in force pursuant to the laws of this state unless exempted by the insurance laws of this state, or any person assisting an unautho-

§33-44-4. Unlawful transaction of insurance.

(a) It is unlawful for any person to engage in any act which constitutes the transaction of insurance under the provisions of this article unless authorized by a license in force pursuant to the laws of this state, or unless exempted by the insurance laws of this state. Any person or insurer engaged in any act which constitutes the unauthorized transaction of insurance shall be subject to the provisions contained in chapter thirty-three of the code and the provisions and penalties set forth in this article.

(b) It is unlawful for any person to, directly or indirectly, represent, aid, counsel, opine, administer, assist in any manner or capacity or otherwise act as an agent for or on behalf of an unauthorized insurer in the unauthorized transaction of insurance. Any person who represents, aids or assists, in any manner or capacity, an unauthorized insurer in violation of this article shall be subject to the provisions and penalties set forth in this article.
(c) An unauthorized insurer shall be bound by the terms of the insurance contract, certificate or agreement as if the contract, certificate or agreement were legally procured under the insurance laws of this state.

(d) This article does not apply to: (i) Any transaction for which a license is not required pursuant to section one, article three of this chapter, including the lawful transaction of surplus lines insurance and reinsurance by insurers; (ii) transactions in this state relative to a policy issued or to be issued outside this state involving insurance on cargo vessels, their craft or hulls, their cargoes, marine builder's risk, commercial marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean marine forms of policy; (iii) transactions in this state involving group life insurance, group accident and sickness insurance or group annuities providing coverage under policies that are recognized under articles fourteen and sixteen, respectively, of this chapter where: (1) The master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs; and (2) except for group annuities, the insurer complies with section thirty-five, article six of this chapter. The commissioner may require the insurer which has issued such master policy to submit such information as the commissioner requires in order to determine if probable cause exists to convene a hearing to determine whether the total charges for the insurance to the persons insured are reasonable in relation to the benefits provided under such policy.

§33-44-5. Service of process on unauthorized insurers.

(a) Any act of transacting insurance by any unauthorized insurer is equivalent to and constitutes an irrevocable appoint-
ment by an unauthorized insurer, binding upon him or her, his
or her executor or administrator, or successor in interest, of the
secretary of state or his or her successor in office, to be the true
and lawful attorney of an unauthorized insurer upon whom may
be served all lawful process in any action, suit or proceeding in
any court by the commissioner, the state or an insured and upon
whom may be served any notice, order, pleading or process in
any proceeding before the commissioner and which arises out
of transacting an insurance business in this state by such an
insurer. Any act of transacting insurance in this state by any
unauthorized insurer or any person acting in furtherance of an
unauthorized insurer's business, signifies the agreement of the
person or unauthorized insurer that any lawful process in such
a court action, suit or proceeding or any notice, order, pleading
or process in an administrative proceeding before the commis-
sioner so served is of the same legal force and validity as
personal service or process in this state upon an insurer.

(b) Service of process in an action must be made by
delivering to and leaving with the secretary of state, or some
person in apparent charge of his or her office, two copies
thereof and by payment to the secretary of state the fee pre-
scribed by section two, article one, chapter fifty-nine of this
code together with any other fees prescribed by law. Service
upon the secretary of state as attorney is service upon the
principal.

(c) Upon receipt by the secretary of state of two copies of
the process to be served, and the payment of all relevant fees,
the secretary of state shall cause the process to be served in the
manner prescribed in subsection (d) of this section.

(d) The secretary of state shall forward a copy of the
process by registered or certified mail to the unauthorized
insurer or any person acting in furtherance of an unauthorized
insurer's business at its last-known principal place of business
and shall keep a record of all process so served upon the person
or unauthorized insurer. Service of process is sufficient.
provided notice of service and a copy of the process are sent
within ten days thereafter by or on behalf of the moving party
to the responding party, at its last-known principal place of
business by registered or certified mail with return receipt
requested. The moving party shall file with the clerk of the
court in which the action is pending, or with the judge or
magistrate of the court in case there be no clerk, or in the
official records of the commissioner if an administrative
proceeding before the commissioner, an affidavit of compliance
herewith, a copy of the process and either a return receipt
purporting to be signed by the defendant or responding party or
a person qualified to receive its registered or certified mail in
accordance with the rules and customs of the post office
department; or, if acceptance was refused by the defendant or
responding party or an agent thereof, the original envelope
bearing a notation by the postal authorities that receipt was
refused. Service of process so made is considered to have been
made within the territorial jurisdiction of any court in this state.

(e) In addition to the manner provided in subsection (d) of
this section, service of process in any action, suit or administra-
tive proceeding shall be valid if served upon any person who
engages in any act which constitutes the transaction of unautho-
rized insurance: Provided, That notice of service and a copy of
process are sent within ten days thereafter, by or on behalf of
the moving party to the responding party at the last-known
principal place of business of the responding party, by regist-
tered or certified mail with return receipt requested. The
moving party shall file with the clerk of the court in which the
action is pending, or with the judge or magistrate of the court in
case there be no clerk, or in the official records of the commis-
sioner if an administrative proceeding before the commissioner,
an affidavit of compliance herewith, a copy of the process and
either a return receipt purporting to be signed by the responding
party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post office department; or, if acceptance was refused by the responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused. In the instance that service of process is refused by the responding party or an agent thereof, service shall be considered sufficient to bestow jurisdiction on the tribunal in which the action was filed.

(f) The papers referred to in subsections (d) and (e) of this section shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the moving party. Service of process shall be complete ten days after the process and the accompanying papers are filed in accordance with this section.

(g) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any unauthorized insurer or upon any person engaged in the transaction of insurance in any other manner now or hereafter permitted by law.

(h) For the purposes of this section, “process” in an action in a court includes only a summons or the initial documents served in an action. The secretary of state is not required to serve any documents in an action after the initial service of process.

§33-44-6. Injunctive relief.

(a) Whenever the commissioner believes, from evidence satisfactory to him or her, that any insurer is violating or is about to violate the provisions of this article, in addition to the administrative remedies available in this article, the commis-
sioner may cause a complaint to be filed in any appropriate circuit court of this state seeking to enjoin and restrain the insurer from continuing the violation or engaging therein or doing any act in furtherance thereof.

(b) The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding preliminary or final injunctive relief as in its judgment is proper. The commissioner may elect to file a complaint in any circuit where transactions have occurred or in the circuit court of Kanawha County.

§33-44-7. Administrative relief.

(a) Any person engaged in any act which constitutes the unauthorized transaction of insurance as set forth in this article may, after notice and hearing pursuant to section thirteen, article two of this chapter, be fined by the commissioner a sum not to exceed twenty thousand dollars for each unauthorized act or transaction of unauthorized insurance.

(b) Any person engaged in any act which constitutes the unauthorized transaction of insurance as set forth in this article may be assessed restitution by the insurance commissioner in an amount sufficient to reimburse any and all insureds for the unpaid claims, if, after notice and hearing pursuant to section thirteen, article two of this chapter, the commissioner finds that the unauthorized insurer has failed to pay claims of its insureds in accordance with the terms of the contracts.

§33-44-8. Civil relief.

(a) No insurance contract entered into in violation of this article shall preclude the insured from enforcing his or her rights under the contract in accordance with the terms and provisions of the contract and the laws of this state against any unauthorized insurer or any person assisting the unauthorized
insurer to the same degree those rights would have been
enforceable had the contract been lawfully procured.

(b) No insurance contract entered into in violation of this
article shall preclude a provider of health care services from
enforcing the rights of the insured under the contract in accord-
dance with the terms and provisions of the contract and the laws
of this state against any unauthorized insurer or any person
assisting the unauthorized insurer pursuant to an assignment of
rights executed between the insured and the health care pro-
vider.

(c) In an action against an unauthorized insurer upon a
contract of insurance issued or delivered to a resident of this
state or to a corporation authorized to do business in this state,
if the trier of fact finds by a preponderance of the evidence that
the unauthorized insurer has failed to make payment in accord-
dance with the terms of the contract, the trier of fact shall award
to the insured or the health care provider:

(1) Contract damages in accordance with the terms and
provisions of the contract and the laws of this state to the same
degree those rights would have been enforceable had the
contract been lawfully procured;

(2) Simple interest at a rate of prime plus one percent on the
total amount awarded as restitution, accruing from the date
payment was due;

(3) If in addition to a finding that the unauthorized insurer
has failed to make payment in accordance with the terms of the
contract, the trier of fact finds by a preponderance of the
evidence that failure to make payment was without reasonable
cause, the trier of fact shall award the plaintiff a reasonable
attorney fee and include the fee in any judgment that may be
rendered in the action. The fee shall not exceed thirty-three
percent of the amount that the trier of fact finds the plaintiff is entitled to recover against the unauthorized insurer;

(4) If in addition to a finding that the unauthorized insurer has failed to make payment in accordance with the terms of the contract, the trier of fact further finds that failure to make payment was willful, wanton and malicious, the trier of fact may award the plaintiff punitive damages in an amount that the trier of fact finds the plaintiff is entitled to recover against the insurer.


Any unauthorized insurer who violates the provisions of this article is guilty of a felony and, upon conviction thereof, may be fined not more than twenty thousand dollars per each unauthorized act or transaction of unauthorized insurance or confined in the state correctional facility not less than one nor more than five years, or both fined and imprisoned.

§33-44-10. Defense of action or proceeding by unauthorized insurer; bond requirements.

(a) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, or any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against the insurer, the unauthorized insurer shall either:

(1) Deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the commissioner in an administrative proceeding, cash or securities or file with the clerk or the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in the action or administrative proceeding; or
(2) Deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the commissioner in an administrative proceeding, cash or securities or file with the clerk or the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount required to procure a license to transact insurance in this state pursuant to the provisions contained within article three of this chapter.

(b) The court or the commissioner in any action, suit or proceeding in which service is made in the manner provided in subsection (d) or (e), section five of this article, may, in its, his or her respective discretion, order the postponement as may be necessary to afford the responding party reasonable opportunity to comply with the provisions of subsection (a) of this section and thereafter to defend the action or proceeding.

§33-44-11. Person providing specified coverage; proof of regulation by a federal government agency.

(a) Any person who transacts insurance, transacts an insurance business or provides insurance coverage in this state for the cost of:

(1) Medical care;
(2) Surgery;
(3) Chiropractic;
(4) Physical therapy;
(5) Speech pathology;
(6) Audiology;
(7) Professional care of mental health;
11  (8) Dental care;

12  (9) Hospital care; or

13  (10) Ophthalmic care, whether the coverage provides for direct payment, reimbursement or any other method of payment, is subject to regulation by the commissioner and to the provisions of this code unless he or she shows that while transacting insurance, or transacting an insurance business or providing the coverage he or she is subject to regulation by an agency of the federal government.

20  (b) A person may show that he or she is subject to regulation by an agency of the federal government by providing the commissioner with an advisory opinion issued pursuant to ERISA Procedure 76-1, 41 Federal Register 36281 (Aug. 27, 1976).

§33-44-12. Collection, maintenance and distribution of restitution to insureds.

All restitution ordered by the commissioner pursuant to the authority set forth in section seven of this article and received from unauthorized insurers shall be collected by the commissioner and distributed to the affected insureds on a pro rata basis. The commissioner shall maintain a record reflecting the names of each of the insureds for which the restitution was ordered, the total amount of the unpaid claims for each of the insureds to which the restitution will be paid and the actual amount of restitution to be paid to the insured. The commissioner shall likewise maintain an account into which restitution received shall be placed until it is distributed to the affected insureds.

(a) The commissioner may proceed in the courts of this state, any reciprocal state or any other state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

(b) The commissioner shall determine which states and territories qualify as reciprocal states.

(c) A certified copy of any foreign decree may be filed in the office of the clerk of any circuit court of this state. The clerk of the circuit court, upon verifying with the commissioner that the decree or order qualified as a foreign decree, shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree, so filed, has the same effect and is considered as a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying a decree of a circuit court of this state and may be enforced or satisfied in like manner.

(d) At the time of the filing of the foreign decree, counsel for the commissioner shall make and file with the clerk of the circuit court an affidavit setting forth the name and last known post office address of the defendant. Promptly upon the filing of the foreign decree and the affidavit, the clerk of the circuit court shall mail notice of the filing of the foreign decree to the defendant at the address given and to the commissioner and shall make a note of the mailing in the docket. In addition, counsel for the commissioner may mail a notice of the filing of the foreign decree to the defendant and to the commissioner and may file proof of mailing with the clerk of the circuit court. Lack of mailing notice of filing by the clerk of the circuit court may not affect the enforcement proceedings if proof of mailing by the counsel for the commissioner has been filed. No execution or other process for enforcement of a foreign decree filing
under this section may issue until thirty days after the date the
decree is filed.

(e) If the defendant shows the circuit court:

(1) That an appeal from the foreign decree is pending or
will be taken, or that a stay of execution has been granted, the
court shall stay enforcement of the foreign decree until the
appeal is concluded, the time for appeal expires or the stay of
execution expires or is vacated upon proof that the defendant
has furnished the security for the satisfaction of the decree
required by the state in which it was rendered.

(2) Any ground upon which enforcement of a decree of any
circuit court of this state would be stayed, the court may stay
enforcement of the foreign decree.

(f) Any person filing a foreign decree shall pay to the clerk
of the circuit court such fees as are required by law.

CHAPTER 159

(H. B. 2970 — By Delegates Michael, Beane, G. White,
Amores, Staton, Angotti and Beach)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section thirty-one-f,
relating to excess or umbrella policies of insurance; and requiring
offers of uninsurance and underinsurance motorist coverage in such policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31f. Uninsured and underinsured motorists' coverage optional on umbrella and excess type liability policies.

(a) Notwithstanding any other provisions of this article, insurers issuing or providing liability policies that are of an excess or umbrella type and which are written to cover automobile liability shall offer uninsured and underinsured motor vehicle coverage on such policies in an amount not less than the amount of liability insurance purchased by the named insured: Provided, That the named insured may decline any or all of the coverage offered under the excess or umbrella type policy.

(b) Offers of optional uninsured and underinsured motor vehicle coverage required by subsection (a) of this section shall be made to the named insured on a form prepared and made available by the insurance commissioner on or before the effective date of this section. The form shall allow any named insured to decline any or all of the coverage offered.

(c) Offers of optional uninsured and underinsured motor vehicle coverage required by subsection (a) of this section shall be made to the named insured by delivering the form at the time of initial application for insurance policies described in subsection (a) of this section or by mailing the form to the
named insured along with the initial premium notice. The named insured shall complete, date, sign, and return the form to the insurer within thirty days after receipt thereof. No insurer or agent thereof is liable for payment of any damages applicable under any optional uninsured or underinsured coverage described in this section which occurs from the date the form was mailed or delivered to the named insured until the insurer receives the form and accepts payment of the premium for the coverage requested therein from the named insured: Provided, That if prior to the insurer's receipt of the executed form, the insurer issues a policy described in this section to the named insured which provides for such optional uninsured or underinsured coverage, the insurer shall be liable for payment of claims against such optional coverage up to the limits provided in such policy. The contents of a form described in this section which has been signed by a named insured shall create a presumption that such named insured and all named insureds received an effective offer of the optional coverages described in this section and that such named insured exercised a knowing and intelligent election or rejection, as the case may be, of such offer specified in the form. Such election or rejection shall be binding on all persons insured under the policy.

(d) Failure of the named insured to return the form described in this section to the insurer as required by this section within the time periods specified in this section creates a presumption that such person received an effective offer of the optional coverages described in this section and that such person exercised a knowing and intelligent rejection of such offer. Such rejection is binding on all persons insured under the policy.

(e) The insurer shall make such forms available to any named insured who requests different coverage limits on or after the effective date of this section. No insurer is required to
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-f, relating to the privacy rights of West Virginia insureds; and providing for commissioner authority to promulgate rules in accordance with Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999).

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION.

§33-6F-1. Privacy; rules.

(b) On or before the first day of July, two thousand one, the commissioner shall propose rules for legislative approval in accordance with article twenty, chapter twenty-nine-a of this code necessary to carry out the provisions of Title V of the Gramm-Leach-Bliley Act, Pub. L. 106-102 (1999) and this article.

CHAPTER 161

(Com. Sub. for H. B. 3080 — By Delegate Beane)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, seven, fourteen and fifteen, article eight, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to permissible investments by insurers; allowing insurers to invest in certain securities; and modifying the types and amount of stocks in which insurers may invest.

Be it enacted by the Legislature of West Virginia:

That sections five, seven, fourteen and fifteen, article eight, 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 8. INVESTMENTS.

§33-8-5. Limitation of investments in one person.
§33-8-7. Government obligations.
§33-8-15. Real property mortgages.
§33-8-5. Limitation of investments in one person.

An insurer shall not, except with the consent of the commissioner, have at one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person, institution or corporation, aggregating an amount exceeding five percent of the insurer's assets. This restriction shall not apply to investments in or loans upon the security of general obligations of the United States or fully guaranteed by the United States or the District of Columbia or any state of the United States or of political subdivisions of the state of West Virginia or other states of the United States, or such other funds or obligations of the United States made pursuant to section seven of this article, or include policy loans made under section nineteen of this article or investments in foreign securities pursuant to section eight of this article. Pursuant to section 106(b) of the "Secondary Mortgage Market Enhancement Act of 1984," an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act.

§33-8-7. Government obligations.

An insurer may invest any of its funds in:

(a) Bonds or securities which are the direct obligation of or which are secured or guaranteed, in whole or in part, as to principal and interest by the United States, any state or territory of the United States or the District of Columbia, where there exists the power to levy taxes for the prompt payment of the principal and interest of such bonds or evidences of indebtedness, and in bonds issued by the federal land banks or securities issued by the federal home loan bank system. Pursuant to section 106(b) of the "Secondary Mortgage Market Enhance-
11 "an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act, except as provided in subsection (c).

17 (b) Bonds or evidences of indebtedness which are direct general obligations of any county, district, city, town, village, school district, park district or other political subdivision of this state or any other state or territory of the United States or the District of Columbia, which shall not be in default in the payment of any of its general obligation bonds, either principal or interest, at the date of such investment; where they are payable from ad valorem taxes levied on all the taxable property located therein and the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed ten per centum of the actual value of all taxable property therein on the basis of which the last assessment was made before the date of such investment.

30 (c) Securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association aggregating an amount not to exceed twenty percent of the insurer’s assets.


1 Subject to the limits set forth in sections five and six of this article, an insurer may invest in the nonassessable shares of capital stock of any solvent corporation created under the laws of the United States or of any state: Provided, That:

5 (a) The capital stock is one which is included in a nationally recognized index of companies, including, but not limited to, Standard & Poors 500 and Wilshire 2000;
(b) The insurer's investment in any one entity under this section would not exceed three percent of its admitted assets; and

(c) As a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would not exceed twenty percent of its admitted assets.

§33-8-15. Real property mortgages.

(a) An insurer may invest in entire first mortgages on improved unencumbered real estate or the entire issue of bonds secured thereby located within any state worth at least thirty-three and one-third per centum more than the amount loaned thereon, based on sound appraisal by a competent appraiser and duly certified by him or her, provided that the investment in any one mortgage or any one issue of bonds or any one contract for deed does not exceed twenty-five thousand dollars or two per centum of the insurer's assets, whichever is the greater.

(b) "Improved real estate," as used in this section, means all farmland which has been reclaimed and is used for the purpose of husbandry, whether for tillage or pasture, and all real property on which permanent buildings suitable for residence or commercial use are situated.

(c) Real property shall not be considered to be encumbered within the meaning of this section by reason of the existence of instruments reserving or excepting mineral rights and interests, rights-of-way, sewer rights and rights in walls or easements, nor by reason of building restrictions or other restrictive covenants, nor by reason of the fact that it is subject to lease under which rents or profits are reserved to the owners: Provided, That the security for such investment is a full and unrestricted first lien
upon such real property and that there is no condition nor right of reentry or forfeiture under which such investments can be cut off, subordinated or otherwise disturbed.

(d) Notwithstanding the restrictions set forth in this section any insurer may invest: (1) In bonds or notes secured by mortgage or trust deed insured by the federal housing administration or in debentures issued by it under the terms of an act of Congress of the United States entitled the “National Housing Act,” as heretofore or hereafter amended; (2) in securities issued by national mortgage associations established by or under the authority of the National Housing Act; and (3) in bonds or notes secured by mortgage or trust deed guaranteed as to principal by the administrator of veterans’ affairs pursuant to the provisions of Title III of an act of Congress of the United States as of June twenty-two, one thousand nine hundred forty-four, entitled the “Servicemen’s Re-Adjustment Act of one thousand nine hundred forty-four,” as heretofore or hereafter amended. Pursuant to section 106(b) of the “Secondary Mortgage Market Enhancement Act of 1984,” an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act, except that the investments as provided in subsection (c) of section seven of this article are considered to be permissible.

(e) Notwithstanding the restrictions herein set forth, the amount of any first mortgage investment as limited by subsection (a) of this section may be exceeded if and to the extent that such excess shall be guaranteed by the administrator of veterans’ affairs pursuant to the provisions of Title III of an act of Congress of the United States of June twenty-two, one thousand nine hundred forty-four, entitled the “Servicemen’s Re-Adjustment Act of one thousand nine hundred forty-four,” as heretofore or hereafter amended. Pursuant to section 106(b) of the
“Secondary Mortgage Market Enhancement Act of 1984,” an act of the Congress of the United States, this section prohibits domestic insurers from exercising the investment authority granted any person, trust, corporation, partnership, association, business trust or business entity pursuant to section 106(a) (1) or (2) of that act, except that the investments as provided in subsection (c) of section seven of this article are considered to be permissible.

(f) No such insurer shall in any manner, either directly or indirectly, by means of corporations, holding companies, trustees or otherwise, invest in real estate securities junior to first mortgages unless the first mortgage in its entirety is owned by the insurer.

CHAPTER 162

(Com. Sub. for S. B. 492 — By Senator Minard)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that fraternal benefit societies be subject to the laws regulating variable contracts.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-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 23. FRATERNAL BENEFIT SOCIETIES.


Every fraternal benefit society shall be governed and be subject to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions); section thirty, article six (fee for form and rate filing); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article eleven (unfair trade practices); article twelve (agents, brokers, solicitors and excess lines); article thirteen (life insurance); article thirteen-a (variable contracts); article fifteen-a (long-term care insurance); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article thirty-nine (disclosure of material transactions).
section twenty-four, article twenty-five-a of said chapter, all relating to permitting health maintenance organizations and hospital, medical and dental service corporations to borrow money for surplus funds and other operating expenses.

Be it enacted by the Legislature of West Virginia:

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

Article

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.*

1 Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section twenty, article five (borrowing by insurers); section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair

*Clerk's Note: This section was also amended by S. B. 493 (Chapter 155), which passed prior to this act.*
trade practices); article twelve (agents, brokers and solicitors), except that the agent’s license fee shall be twenty-five dollars; section two-a, article fifteen (definitions); section two-b, article fifteen (guaranteed issue); section two-d, article fifteen (exception to guaranteed renewability); section two-e, article fifteen (discontinuation of coverage); section two-f, article fifteen (certification of creditable coverage); section two-g, article fifteen (applicability); section four-e, article fifteen (benefits for mothers and newborns); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental health); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section three-j, article sixteen (benefits for mothers and newborns); section three-k, article sixteen (preexisting condition exclusions); section three-l, article sixteen (guaranteed renewability); section three-m, article sixteen (creditable coverage); section three-n, article sixteen (eligibility for enrollment); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); section sixteen, article sixteen (diabetes insurance); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum
standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article forty-one (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws are not applicable to any health maintenance organization granted a certificate of authority under this article. The provisions of this article shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless
(b) Factually accurate advertising or solicitation regarding
the range of services provided, the premiums and copayments
charged, the sites of services and hours of operation and any
other quantifiable, nonprofessional aspects of its operation by
a health maintenance organization granted a certificate of
authority, or its representative shall not be construed to violate
any provision of law relating to solicitation or advertising by
health professions: *Provided,* That nothing contained in this
subsection shall be construed as authorizing any solicitation or
advertising which identifies or refers to any individual provider
or makes any qualitative judgment concerning any provider.

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

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

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

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

CHAPTER 164

(H. B. 2389 — By Delegates Leach, Hatfield, Smirl and Fleischauer)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to health maintenance organizations (HMOs); definitions; and providing that certain advanced nurse practitioners may serve in lieu of an HMO subscriber’s primary care physician.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


1 (1) “Basic health care services” means physician, hospital, out-of-area, podiatric, chiropractic, laboratory, X ray, emergency, short-term mental health services not exceeding twenty outpatient visits in any twelve-month period, and cost-effective

*Clerk’s Note:* This section was also amended by H. B. 3253 (Chapter 165), which passed prior to this act.
preventive services including immunizations, well-child care,
periodic health evaluations for adults, voluntary family plan-
ing services, infertility services and children’s eye and ear
examinations conducted to determine the need for vision and
hearing corrections, which services need not necessarily include
all procedures or services offered by a service provider.

(2) “Capitation” means the fixed amount paid by a health
maintenance organization to a health care provider under
contract with the health maintenance organization in exchange
for the rendering of health care services.

(3) “Commissioner” means the commissioner of insurance.

(4) “Consumer” means any person who is not a provider of
care or an employee, officer, director or stockholder of any
provider of care.

(5) “Copayment” means a specific dollar amount, or
percentage, except as otherwise provided for by statute, that the
subscriber must pay upon receipt of covered health care
services and which is set at an amount or percentage consistent
with allowing subscriber access to health care services.

(6) “Employee” means a person in some official employ-
ment or position working for a salary or wage continuously for
no less than one calendar quarter and who is in such a relation
to another person that the latter may control the work of the
former and direct the manner in which the work shall be done.

(7) “Employer” means any individual, corporation, partner-
ship, other private association, or state or local government that
employs the equivalent of at least two full-time employees
during any four consecutive calendar quarters.

(8) “Enrollee”, “subscriber” or “member” means an
individual who has been voluntarily enrolled in a health
maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(9) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(10) "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of the care or hospitalization, osteopathic services, chiropractic services, podiatric services, home health, health education, or rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

(11) "Health maintenance organization" or "HMO" means a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services and which:

(a) Receives premiums for the provision of basic health care services to enrollees on a prepaid per capita or prepaid aggregate fixed sum basis, excluding copayments;

(b) Provides physicians' services primarily: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice arrangement; or (iii) through some combination of paragraphs (i) and (ii) of this subdivision:

(c) Assures the availability, accessibility and quality, including effective utilization, of the health care services which
it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and

(d) Offers services through an organized delivery system in which a primary care physician or primary care provider is designated for each subscriber upon enrollment. The primary care physician or primary care provider is responsible for coordinating the health care of the subscriber and is responsible for referring the subscriber to other providers when necessary:

Provided, That when dental care is provided by the health maintenance organization the dentist selected by the subscriber from the list provided by the health maintenance organization shall coordinate the covered dental care of the subscriber, as approved by the primary care physician or the health maintenance organization.

(12) "Impaired" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the health maintenance organization’s annual statement, the assets of the health maintenance organization are less than the sum of all of its liabilities and required reserves including any minimum capital and surplus required of the health maintenance organization by this chapter so as to maintain its authority to transact the kinds of business or insurance it is authorized to transact.

(13) “Individual practice arrangement” means any agreement or arrangement to provide medical services on behalf of a health maintenance organization among or between physicians or between a health maintenance organization and individual physicians or groups of physicians, where the physicians are not employees or partners of the health maintenance organization and are not members of or affiliated with a medical group.

(14) “Insolvent” or “insolvency” means a financial situation in which, based upon the financial information that would be required by this chapter for the preparation of the health
maintenance organization’s annual statement, the assets of the
health maintenance organization are less than the sum of all of
its liabilities and required reserves.

(15) “Medical group” or “group practice” means a profes-
sional corporation, partnership, association or other organiza-
tion composed solely of health professionals licensed to
practice medicine or osteopathy and of other licensed health
professionals, including podiatrists, dentists and optometrists,
as are necessary for the provision of health services for which
the group is responsible: (a) A majority of the members of
which are licensed to practice medicine or osteopathy; (b) who
as their principal professional activity engage in the coordinated
practice of their profession; (c) who pool their income for
practice as members of the group and distribute it among
themselves according to a prearranged salary, drawing account
or other plan; and (d) who share medical and other records and
substantial portions of major equipment and professional,
technical and administrative staff.

(16) “Premium” means a prepaid per capita or prepaid
aggregate fixed sum unrelated to the actual or potential utiliza-
tion of services of any particular person which is charged by the
health maintenance organization for health services provided to
an enrollee.

(17) “Primary care physician” means the general practitio-
er, family practitioner, obstetrician/gynecologist, pediatrician
or specialist in general internal medicine who is chosen or
designated for each subscriber who will be responsible for
coordinating the health care of the subscriber, including
necessary referrals to other providers.

(18) “Primary care provider” means a person who may be
chosen or designated in lieu of a primary care physician for
each subscriber, who will be responsible for coordinating the
health care of the subscriber, including necessary referrals to
other providers, and includes:
(a) An advanced nurse practitioner practicing in compliance with article seven, chapter thirty of this code and other applicable state and federal laws, who develops a mutually agreed upon association in writing with a primary care physician on the panel of and credentialed by the health maintenance organization; and

(b) A certified nurse-midwife, but only if chosen or designated in lieu of a subscriber’s primary care physician or other primary care provider during the subscriber’s pregnancy and for a period extending through the end of the month in which the sixty-day period following termination of pregnancy ends.

(c) Nothing in this subsection may be construed to expand the scope of practice for advanced nurse practitioners as governed by article seven, chapter thirty of this code or any legislative rule, or for certified nurse-midwives, as defined in article fifteen, chapter thirty of this code.

(19) “Provider” means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to furnish health care services.

(20) “Uncovered expenses” means the cost of health care services that are covered by a health maintenance organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(21) “Service area” means the county or counties approved by the commissioner within which the health maintenance organization may provide or arrange for health care services to be available to its subscribers.

(22) “Statutory surplus” means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.

(23) “Surplus” means the amount by which a corporation’s assets exceeds its liabilities and required reserves based upon the financial information which would be required by this
chapter for the preparation of the corporation’s annual statement except that assets pledged to secure debts not reflected on the books of the health maintenance organization shall not be included in surplus.

(24) “Surplus notes” means debt which has been subordinated to all claims of subscribers and general creditors of the organization.

(25) “Qualified independent actuary” means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for health maintenance organizations and who has no financial or employment interest in the health maintenance organization.

(26) “Quality assurance” means an ongoing program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the enrollee’s care, pursue opportunities to improve the enrollee’s care and to resolve identified problems at the prevailing professional standard of care.

(27) “Utilization management” means a system for the evaluation of the necessity, appropriateness and efficiency of the use of health care services, procedures and facilities.

CHAPTER 165

(H. B. 3253 — By Delegates Leach, Frederick, Keener, R. M. Thompson, Fletcher, Ashley and Hall)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-five-a, chapter thirty-three of the code of West Virginia, one thousand
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


1 (1) "Basic health care services" means physician, hospital, out-of-area, podiatric, chiropractic, laboratory, X ray, emergency, short-term mental health services not exceeding twenty outpatient visits in any twelve-month period, and cost-effective preventive services including immunizations, well-child care, periodic health evaluations for adults, voluntary family planning services, infertility services, and children’s eye and ear examinations conducted to determine the need for vision and hearing corrections, which services need not necessarily include all procedures or services offered by a service provider.

2 (2) "Capitation" means the fixed amount paid by a health maintenance organization to a health care provider under contract with the health maintenance organization in exchange for the rendering of health care services.

3 (3) "Commissioner" means the commissioner of insurance.

4 (4) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

*Clerk's Note: This section was also amended by H. B. 2389 (Chapter 164), which passed subsequent to this act.
(5) “Copayment” means a specific dollar amount or percentage, except as otherwise provided for by statute, that the subscriber must pay upon receipt of covered health care services and which is set at an amount or percentage consistent with allowing subscriber access to health care services.

(6) “Employee” means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work shall be done.

(7) “Employer” means any individual, corporation, partnership, other private association, or state or local government that employs the equivalent of at least two full-time employees during any four consecutive calendar quarters.

(8) “Enrollee”, “subscriber” or “member” means an individual who has been voluntarily enrolled in a health maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(9) “Evidence of coverage” means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(10) “Health care services” means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of the care or hospitalization, osteopathic services, chiropractic services, podiatric services, home health, health education or rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.
(11) "Health maintenance organization" or "HMO" means a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services, and which:

(a) Receives premiums for the provision of basic health care services to enrollees on a prepaid per capita or prepaid aggregate fixed sum basis, excluding copayments;

(b) Provides physicians' services primarily: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice arrangement; or (iii) through some combination of paragraphs (i) and (ii) of this subdivision;

(c) Assures the availability, accessibility and quality, including effective utilization, of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and

(d) Offers services through an organized delivery system in which a primary care physician is designated for each subscriber upon enrollment. The primary care physician is responsible for coordinating the health care of the subscriber and is responsible for referring the subscriber to other providers when necessary: Provided, That when dental care is provided by the health maintenance organization the dentist selected by the subscriber from the list provided by the health maintenance organization shall coordinate the covered dental care of the subscriber, as approved by the primary care physician or the health maintenance organization.

(12) "Impaired" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the health maintenance organiza-
tion's annual statement, the assets of the health maintenance
organization are less than the sum of all of its liabilities and
required reserves including any minimum capital and surplus
required of the health maintenance organization by this chapter
so as to maintain its authority to transact the kinds of business
or insurance it is authorized to transact.

(13) "Individual practice arrangement" means any agree-
ment or arrangement to provide medical services on behalf of
a health maintenance organization among or between physi-
cians or between a health maintenance organization and
individual physicians or groups of physicians, where the
physicians are not employees or partners of the health mainte-
nance organization and are not members of or affiliated with a
medical group.

(14) "Insolvent" or "insolvency" means a financial situation
in which, based upon the financial information that would be
required by this chapter for the preparation of the health
maintenance organization's annual statement, the assets of the
health maintenance organization are less than the sum of all of
its liabilities and required reserves.

(15) "Medical group" or "group practice" means a profes-
sional corporation, partnership, association or other organiza-
tion composed solely of health professionals licensed to
practice medicine or osteopathy and of other licensed health
professionals, including podiatrists, dentists and optometrists,
as are necessary for the provision of health services for which
the group is responsible: (a) A majority of the members of
which are licensed to practice medicine or osteopathy; (b) who
as their principal professional activity engage in the coordinated
practice of their profession; (c) who pool their income for
practice as members of the group and distribute it among
themselves according to a prearranged salary, drawing account
or other plan; and (d) who share medical and other records and
substantial portions of major equipment and professional, technical and administrative staff.

(16) "Premium" means a prepaid per capita or prepaid aggregate fixed sum unrelated to the actual or potential utilization of services of any particular person which is charged by the health maintenance organization for health services provided to an enrollee.

(17) "Primary care physician" means the general practitioner, family practitioner, obstetrician/gynecologist, pediatrician or specialist in general internal medicine who is chosen or designated for each subscriber who will be responsible for coordinating the health care of the subscriber, including necessary referrals to other providers: Provided, That a certified nurse-midwife may be chosen or designated in lieu of as a subscriber's primary care physician during the subscriber's pregnancy and for a period extending through the end of the month in which the sixty-day period following termination of pregnancy ends: Provided, however, That nothing in this subsection shall expand the scope of practice for certified nurse-midwives as defined in article fifteen, chapter thirty of this code.

(18) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to furnish health care services.

(19) "Uncovered expenses" means the cost of health care services that are covered by a health maintenance organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(20) "Service area" means the county or counties approved by the commissioner within which the health maintenance organization may provide or arrange for health care services to be available to its subscribers.
(21) "Statutory surplus" means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.

(22) "Surplus" means the amount by which a corporation's assets exceeds its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the corporation's annual statement except that assets pledged to secure debts not reflected on the books of the health maintenance organization shall not be included in surplus.

(23) "Surplus notes" means debt which has been subordinated to all claims of subscribers and general creditors of the organization.

(24) "Qualified independent actuary" means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for health maintenance organizations and who has no financial or employment interest in the health maintenance organization.

(25) "Quality assurance" means an ongoing program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the enrollee's care, pursue opportunities to improve the enrollee's care and to resolve identified problems at the prevailing professional standard of care.

(26) "Utilization management" means a system for the evaluation of the necessity, appropriateness and efficiency of the use of health care services, procedures and facilities.