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AN ACT to amend and reenact sections one, two and three, article twenty-five-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto eight new sections, designated sections four through eleven, all relating to managed care plan's benefits and responsibilities; amending statement of purpose for patients bill of rights; amending definitions; providing for notice of certain enrollee rights; prohibiting incentives or disincentives to providing care; allowing standing referrals; requiring internal grievance procedures; establishing the right to an external review of coverage denials; requiring certain enrollee benefits and services; establishing appeal process and requirements; establishing standards for external review and external review organizations; authorizing insurance commissioner to promulgate rules; providing civil liability for failure of managed care plan to comply with external review decisions; creating internal effective date; and providing rules of construction of this article.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twenty-five-c, chapter thirty-three 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 eight new sections, designated sections four through eleven, all to read as follows:

ARTICLE 25C. HEALTH MAINTENANCE ORGANIZATION PATIENT BILL OF RIGHTS.

§33-25C-1. Short title and purpose.
§33-25C-4. Access to appropriate health services.
§33-25C-5. Enrollee complaints; internal grievance procedure.
§33-25C-10. Construction.
§33-25C-11. Effective date.

§33-25C-1. Short title and purpose.

1 This article may be referred to as the “Patients’ Bill of Rights.” It is the intent of the Legislature that enrollees covered by health care plans receive quality, cost-effective health care designed to maintain and improve their health. The purpose of this article is to ensure that health plan enrollees:

(a) Have improved access to information regarding their health plans;

(b) Have sufficient and timely access to appropriate health care services, and choice among health care providers;

(c) Are assured that health care decisions are made by appropriate medical personnel;

(d) Have access to a quick and impartial process for appealing plan decisions;

(e) Are protected from unnecessary invasions of health care privacy; and
16 (f) Are assured that personal health care information will be used only as necessary to obtain and pay for health care or to improve the quality of care.


For purposes of this article:

(a) “Commissioner” means the commissioner of insurance.

(b) “Credentials” means medical training, education, specialties, and board certifications of the provider.

(c) “Enrollee” is a natural person who has entered into an agreement with a health maintenance organization or prepaid limited health service organization for the provision of managed health care.

(d) “External review” means a process, independent of all affected parties, to determine if a health care service is medically necessary, or experimental.

(e) “Health care plan” means a plan that establishes, operates, or maintains a network of health care providers that have entered into agreements with the plan to provide health care services to enrollees to whom the plan has the ultimate obligation to arrange for the provision of or payment for services through organizational arrangements for ongoing quality assurance, utilization review programs, or dispute resolution.

For purposes of this definition, “health care plan” shall not include indemnity health insurance policies including those using a contracted provider network;

(f) “Managed care plan” or “plan” means any health maintenance organization or prepaid limited health service
organization: Provided, That this article only applies to prepaid limited health service organizations to the extent of coverage and services these organizations offer;

(g) “Provider” means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to provide health care services or supplies.


All managed care plans must on or after the first day of July, two thousand two, provide to enrollees a notice of certain enrollee rights. The notice shall be provided to enrollees on a yearly basis on a form prescribed by the commissioner and shall include, but not be limited to:

(a) The enrollee’s rights to a description of his or her rights and responsibilities, plan benefits, benefit limitations, premiums, and individual cost-sharing requirements;

(b) The enrollee’s right to a description of the plan’s grievance procedure and the right to pursue grievance and hearing procedures without reprisal from the managed care plan;

(c) A description of the method in which an enrollee can obtain a listing of the plan’s provider network, including the names and credentials of all participating providers, and the method in which an enrollee may choose providers within the plan;

(d) The enrollee’s right to privacy and confidentiality;

(e) The right to full disclosure from the enrollee’s health care provider of any information relating to his or her medical condition or treatment plan, and the ability to examine and offer corrections to the enrollee’s medical records;
(f) The enrollee's right to be informed of plan policies and any charges for which the enrollee will be responsible;

(g) The right of enrollees to have coverage denials involving medical necessity or experimental treatment reviewed by appropriate medical professionals who are knowledgeable about the recommended or requested health service, as part of an external review as provided in this article;

(h) A description of the method in which an enrollee can obtain access to a summary of the plan's accreditation report;

(i) The right of an enrollee to have medical advice or options communicated to him or her without any limitations or restrictions being placed upon the provider or primary care physician by the managed care plan;

(j) A list of all other legally mandated benefits to which the enrollee is entitled, including coverage for services provided pursuant to sections eight-a, eight-b, eight-c, eight-d, eight-e, article twenty-five-a of this chapter, article twenty-five-e of this chapter, and article forty-two of this chapter, and all rules promulgated pursuant to this chapter regulating managed care plans.

(k) Any other areas the commissioner may propose in accordance with section nine of this article.

§33-25C-4. Access to appropriate health services.

(a) Each managed care plan must allow an enrollee to choose a primary care provider who is accepting new enrollees from a list of participating providers. Enrollees also must be permitted to change primary care providers after six months with the change becoming effective no later than the beginning of the month next following the enrollee's request for the change.
(b) The enrollee’s managed care plan may not provide to any provider or any primary care physician an incentive or disincentive plan that includes specific payment made directly or indirectly, in any form, to the provider or primary care physician as an inducement to deny, release, limit, or delay specific, medically necessary and appropriate services provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

(c) A managed care plan shall have a procedure by which an enrollee, upon diagnosis with a life-threatening, degenerative or disabling condition or disease, either of which requires specialized health care over a prolonged period of time, may receive a standing referral to a specialist with expertise in that condition or disease who will be responsible for and capable of providing and coordinating the member’s specialty care. When a standing referral is made, the managed care plan shall periodically review the referral for continued necessity.

(d) Each managed care plan must provide for appropriate and timely referral of enrollees to a choice of specialists within the plan if specialty care is warranted. The referral shall be first to a specialist located in the geographic area of the plan in which the enrollee resides and if an appropriate specialist is not available in the area, then to a specialist located elsewhere within the plan. If the type of medical specialist who is appropriate for a specific condition is not represented on the specialty panel, enrollees must have access to nonparticipating specialty health care providers in a manner consistent with their managed care contract.

(e) Each managed care plan must, upon the request of an enrollee, provide access by the enrollee to a second opinion regarding a diagnosis or treatment plan requiring a serious or complex procedure, from a qualified participating provider.
(f) Each managed care plan must, at the option of the enrollee, continue to cover services of a primary care provider whose contract with the plan or whose contract with a subcontractor is being terminated by the plan or subcontractor without cause under the terms of that contract for at least sixty days following notice of termination to the enrollees. The plan’s obligation to continue to cover the primary care physician’s services is contingent upon the primary care physician’s acceptance and compliance with the same terms and conditions as those of the contract the plan or subcontractor is terminating, except for any provision requiring that the managed care plan assign new enrollees to the terminated provider.

§33-25C-5. Enrollee complaints; internal grievance procedure.

(a) Each managed care plan must establish and maintain an internal grievance procedure for the fair consideration of disputes relating to any provisions of the plan’s contract, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations or nonrenewals of enrollee coverage; observance of an enrollee’s rights as a patient; the quality of health care services; or decisions by managed care plans to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee, as more specifically set forth in section twelve, article twenty-five-a, chapter thirty-three of this code.

(b) Except for determinations of whether a health care service is medically necessary, or determinations of whether a health care service is experimental, an enrollee may appeal the final decision resulting from the internal grievance procedure to the insurance commissioner, as set forth in section twelve, article twenty-five-a, chapter thirty-three of this code.

(c) Any party aggrieved by an order of the insurance commissioner may appeal to the circuit court of Kanawha
20 County, as set forth in section fourteen, article two, chapter thirty-three. The judgment of the circuit court may be reviewed upon appeal by the supreme court of appeals in the same manner as other civil cases to which the state is a party.


(a) For determinations of whether a health care service is medically necessary, or determinations of whether a health care service is experimental, an enrollee may seek review by a certified external review organization of a managed care plan’s decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the managed care plan’s internal grievance process and receiving a decision that is unfavorable to the enrollee, or after the managed care plan has exceeded the time periods for grievances provided in section twelve, article twenty-five-a of this chapter, without good cause and without reaching a decision.

(b) A request for external review must be made in writing to the managed care plan and the insurance commissioner, within sixty days after the managed care plan has exceeded the time periods for grievances without reaching a decision, as set forth in subsection (a) of this section, or within sixty days after receiving an unfavorable decision by the managed care plan.

(c) External reviews may be requested by enrollees where the denial, reduction, modification or termination of payment for health care services for an enrollee would result in payment of at least one thousand dollars or a course of health care services that would exceed one thousand dollars by the enrollee if the health care were paid for by the enrollee.

(d) In an external review, the external review organization must consider, at a minimum, the information submitted by the managed care plan, the enrollee and the enrollee’s provider, including the enrollee’s medical records; the terms and condi-
tions of the plan; and the standards, criteria and clinical
rationale used by the managed care plan to reach its decision.

(e) External reviews relate only to questions of whether a
health care service is medically necessary or whether a health
care service is experimental. The cost of external reviews shall
be borne by the managed care plan.

(f) Determinations of whether a health care service is
medically necessary will be made by an external review
organization through use of at least one physician, or other
provider appropriate to the health care service under consider-
ation, who is knowledgeable about the recommended or
requested health service.

(g) Determinations of whether a health care service is
experimental will be made by an external review organization
through use of a panel of at least three physicians, or other
providers appropriate to the health care service under consider-
ation, who are knowledgeable about the recommended or
requested health service.

(h) External reviews which relate to both a determination of
whether a health care service is medically necessary and a
determination of whether a health care service is experimental
will be conducted by a panel of at least three physicians, or
other providers appropriate to the health care service under
consideration, who are knowledgeable about the recommended
or requested health service.

(i) Questions of coverage of health care services which do
not include determinations of whether a health care service is
medically necessary or whether a health care service is experi-
mental will be confined to the internal grievance procedure as
referred to in section five of this article and set forth in section
twelve, article twenty-five-a of this chapter, and in the rules of
the insurance commissioner.
(j) Failure of the managed care plan to make all reasonable efforts to provide medical and other relevant records to the external review organization within the time frames set by the commissioner will result in a determination in the external review adverse to the managed care plan, in which event the managed care plan must provide coverage for the requested or proposed health care services.

(k) Failure of the enrollee to provide medical and other relevant records to the external review organization within the time frames established by the commissioner will result in the external review proceeding to decision without consideration of the records in the possession or control of the enrollee.

(l) Upon written request, the commissioner may grant additional time, for good cause shown, in which a party may forward records to the external review organization if the party has made a timely request to the provider to forward the records, and the provider has failed to forward the records as requested. If the external review is an expedited review, the commissioner must consider the possible adverse health consequences to the enrollee in determining whether to permit additional time to comply.

(m) Either the managed care plan or the enrollee may request that the commissioner issue subpoenas to providers for the enrollee’s medical or other relevant records.

(n) Upon an enrollee’s request, an expedited external review shall be provided within a period of seven days in circumstances where failure of the enrollee to immediately receive the requested or proposed health care service could result in placing the health of the enrollee or the health of enrollee’s unborn child in serious jeopardy, cause serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. The commissioner may, by rule, shorten the seven-day time frame.
(o) The commissioner shall propose rules in accordance with section nine of this article which establish procedures for external reviews under this article and certification of external review organizations. In development of these rules, the commissioner shall consider the latest version of the national association of insurance commissioners health carrier external review model act. These rules shall provide:

1. The maximum rates and maximum amounts which external review organizations may charge for external reviews;
2. Procedures for the fair and efficient selection of and assignment of external review organizations to external reviews as they are requested;
3. Procedures and specific time constraints for the provision of the enrollee’s medical and other relevant records to the external review organization upon the occurrence of an external review;
4. Specified time frames within which the managed care plan and the enrollee must provide all medical and similar records to the external review organization;
5. Provisions for the confidentiality of enrollee medical records;
6. Procedures and standards to insure that external review organizations are properly qualified and approved by the commissioner to perform external reviews; and
7. Procedures for fair notice to the enrollee and the managed care plan of decisions or other important steps in the external review process.

(p) Upon written application to and approval by the commissioner, a managed care plan may be exempted from the
requirements for external review as specified in this section upon a showing that:

(1) The managed care plan has an established external review procedure in place;

(2) The managed care plan has been reviewed by and maintains a current full accreditation from a nationally recognized accreditation and review organization approved by the commissioner, in accordance with section seventeen-a, article twenty-five-a of this chapter; and

(3) As part of the accreditation process the accreditation and review organization reviewed and approved the managed care plan's external review process.


(a) After settlement or exhaustion of all legal appeals involving determinations of whether health care services are medically necessary or experimental, a managed care plan must comply with the decision rendered in an external review under this article and may be held civilly liable for all damages proximately caused to an enrollee for its failure to so comply.

(b) A managed care plan may not enter into a contract with a physician, hospital, or other health care provider or pharmaceutical company which includes an indemnification or hold harmless clause for the acts or conduct of the managed care plan addressed by this section. Any indemnification of a hold harmless clause in an existing contract is hereby declared void.

(c) It is a defense to any action or liability asserted under this section against a managed care plan that:

(1) The coverage for the health care service in question was provided under the plan and in compliance with the external review decision; or
(2) Neither the managed care plan, nor any employee, agent, or ostensible agent for the managed care plan controlled, influenced, or participated in the health care decision.

(d) This section does not create any liability on the part of an employer, government agency, or an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employers, or employees, or a governmental agency that purchases coverage on behalf of individuals and families.

(e) A person may not maintain a cause of action under this section against a managed care plan unless:

(1) The affected enrollee or the enrollee’s representative has exercised the opportunity established in section five of this article and further established by legislative rule to seek external review of the health care treatment decision;

(2) The determination of the external review association was in favor of the enrollee; and

(3) The managed care plan has not complied with the external review association’s decision.

(f) Any action under this section shall be commenced within two years of the completion of the external review process: Provided, That a minor or persons under legal disability may commence action within the time period prescribed in section fifteen, article two, chapter fifty-five of this code.

(g) This section does not create any new cause of action, or eliminate any presently existing cause of action.

(h) This section does not apply to workers’ compensation insurance under article two, chapter twenty-three of the code.

1 Each managed care plan is accountable for and must oversee any activities required by this article that it delegates to any subcontractor. No contract with a subcontractor executed by the managed care plan or the subcontractor may relieve the managed care plan of its obligations to any enrollee for the provision of health care services or of its responsibility for compliance with statutes or rules.


1 The commissioner may propose rules for legislative approval to be effective by the first day of July, two thousand two, and in accordance with the provisions of article three, chapter twenty-nine-a of this code:

5 (a) To establish further standards for external review procedures to be implemented by managed care plans;

7 (b) To establish further standards for certification of independent review organizations; and

9 (c) To further effectuate the purposes of this article.

§33-25C-10. Construction.

1 To the extent permitted by law, if any provision of this article conflict with other state or federal law, then the provision must be construed in a manner most favorable to the enrollee.

§33-25C-11. Effective date.

1 The enrollee’s right to an external review by an external review organization certified and selected by the commissioner and the liability provisions contained in subsection (a) of section seven of this article will be effective the first day of July, two thousand two.
AN ACT to amend and reenact section seven, article twenty-seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the confidential treatment of materials filed in accordance with the “Model Insurance Holding Company Systems Act”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section six of this article and all information reported pursuant to sections four and five of this article, shall 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 insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard,
12 determines that the interests of policyholders, shareholders or
13 the public will be served by the publication thereof, in which
14 event he or she may publish all or any part thereof in such
15 manner as he or she may consider appropriate.

CHAPTER 168

(S. B. 503 — By Senator Minard)

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

AN ACT to amend and reenact sections one, two, four, five, seven
and eleven, article thirty-three, chapter thirty-three of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
all relating to codification of statutory accounting principles to be
used in the annual audited financial reports of insurers; and
addressing the commissioner's approval of combined or consoli-
dated financial statements.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, seven and eleven, article thirty-
three, 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 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.
§33-33-2. Definitions.
§33-33-5. Designation of independent certified public accountant.
§33-33-7. Consolidated or combined audits.
§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

§33-33-1. Declaration of policy and purpose.

(a) The purpose of this article is to improve the insurance commissioner's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

(b) Foreign or alien insurers filing audited financial reports in another state, pursuant to the other state's requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from this article if:

(1) A copy of the audited financial report, report on significant deficiencies in internal controls and the accountant's letter of qualifications which are filed with the other state are filed with the commissioner in accordance with the filing dates specified in sections three, ten and ten-a of this article, respectively. Canadian insurers may submit accountants' reports as filed with the Canadian dominion department of insurance.

(2) A copy of any notification of adverse financial condition report filed with the other state is filed with the commissioner within the time specified in section nine of this article.

(c) This article shall not prohibit or preclude or in any way limit the commissioner from performing examinations of insurers as specified in section nine, article two of this chapter or any other examinations as the commissioner may be authorized by this chapter to perform.

§33-33-2. Definitions.
(a) “Accountant” and “independent certified public accountant” means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which the accountant is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.

(b) “Annual statement” means the annual financial statement required to be filed by insurers with the commissioner pursuant to the provisions of this chapter.

(c) “Audited financial report” means and includes those items specified in section four of this article.

(d) “Insurer” for purposes of this article means any domestic insurer as defined in section six, article one of this chapter and includes any domestic stock insurance company, mutual insurance company, reciprocal insurance company, farmers’ mutual fire insurance company, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, captive insurance company or risk retention group and any licensed foreign or alien insurer defined in article one of this chapter.

(e) “Workpapers” means and includes audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the examination of the financial statements of an insurer and which support the opinion thereon.


(a) The annual audited financial report shall report the financial condition of the insurer as of the end of the most
recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices for preparation of the annual statement or as otherwise permitted by the commissioner.

(b) The annual audited financial report shall include the following:

(1) Report of independent certified public accountant;

(2) Balance sheet reporting admitted assets, liabilities, capital and surplus;

(3) Statement of gain or loss from operations or statement of revenue and expenses;

(4) Statement of cash flows statement;

(5) Statement of changes in capital and surplus;

(6) Notes to financial statements. These notes shall be those required by the appropriate national association of insurance commissioners annual statement instructions and accounting practices and procedures manual, as amended, including reconciliation differences, if any, between the audited statutory financial statements and the annual statement with a written description of the nature of these differences.

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and:

(A) The financial statement shall be comparative, presenting the amounts as of the thirty-first day of December of the
current year and the amounts as of the immediately preceding thirty-first day of December: Provided, That in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

(B) Amounts may be rounded to the nearest thousand dollars;

(8) Supplementary data and information. This shall include any additional clarifying information or data which the commissioner may require to be disclosed.

§33-33-5. Designation of independent certified public accountant.

(a) Each insurer required by this article to file an annual audited financial report must, within sixty days after becoming subject to the requirements, register with the commissioner in writing the name and address of the accountant retained to conduct the annual audit set forth in this article.

(b) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of this code and rules that relate to accounting and financial matters and affirming that he or she will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the commissioner specifying any exceptions as he or she may believe appropriate.

(c) If an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer’s financial statements, the insurer shall within thirty days of the date the accountant is engaged notify the commissioner of this event.

(d) If an accountant who was the accountant for the immediately preceding filed audited financial report is dis-
missed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the notification there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish it a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

§33-33-7. Consolidated or combined audits.

An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. If an approval is granted, a
columnar consolidating or combining worksheet shall be filed with the report incorporating the following:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
2. Amounts for each insurer subject to this section shall be stated separately;
3. Noninsurance operations may be shown on the worksheet on a combined or individual basis;
4. Explanations of consolidating and eliminating entries shall be included; and
5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

(a) Workpapers shall be kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the examination of the financial statements of an insurer.

(b) Every insurer required to file an audited financial report pursuant to this article shall require the accountant to make available for review by the commissioner the workpapers prepared in the conduct of the examination. The insurer shall require that the accountant retain the audit workpapers and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the insurance department or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the
commissioner has filed a report of examination, as required by section nine, article two of this chapter, covering the period of the audit but no longer than seven years from the date of the audit report.

(c) In the conduct of the aforementioned periodic review by the commissioner, it shall be agreed that copies of pertinent audit workpapers may be made and retained by the commissioner. Reviews by the commissioner shall be considered investigations and all workpapers and communications obtained during the course of any investigations shall be afforded the same confidentiality as other examination workpapers generated by the commissioner.

CHAPTER 169

(Com. Sub. for H. B. 2486 — By Mr. Speaker, Mr. Kiss, and Delegates Angotti, Amores, Beane, Cann and R. M. Thompson)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article forty-five, all relating to establishing claim settlement practices for insurers providing certain health insurance coverages; defining terms; establishing procedures and criteria for payment of claims by insurers; excepting certain providers and other entities from this article; providing procedures to review and appeal claims; requiring interest paid for failure to pay certain claims; requiring certain information be provided to insurer and providers to verify claims; providing timely payment of certain claims; requiring notice of failure to pay claim; providing procedures for retroactive approval
and denial of claims; establishing requirements for payment of
certain providers; prohibiting penalizing a provider who invokes
the rights under this article; authorizing legislative rulemaking
authority to the insurance commissioner; and providing that the
insurance commissioner may not adjudicate claims made pursuant
to this article.

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
thereo a new article, designated article forty-five, all to read as
follows:

ARTICLE 45. ETHICS AND FAIRNESS IN INSURER BUSINESS PRACTICES.

§33-45-1. Definitions.

§33-45-2. Minimum fair business standards contract provisions required; processing
and payment of health care services; provider claims; commissioner’s
jurisdiction.

§33-45-3. Damages, attorney fees and costs available to providers upon insurer’s
violation of article or breach of contract provisions.

§33-45-4. Providers invoking rights protected.

§33-45-5. Commissioner authorized to propose rules.

§33-45-6. Commissioner’s authority.

§33-45-7. Contractual alternative reimbursement arrangements.


§33-45-1. Definitions.

1 As used in this article:

2 (1) “Claim” means each individual request for reimburse-
3 ment or proof of loss made by or on behalf of an insured or a
4 provider to an insurer, or its intermediary, administrator or
5 representative, with which the provider has a provider contract
6 for payment for health care services under any health plan.
(2) "Clean claim" means a claim: (A) That has no material defect or impropriety, including all reasonably required information and substantiating documentation, to determine eligibility or to adjudicate the claim; or (B) with respect to which an insurer has failed timely to notify the person submitting the claim of any such defect or impropriety in accordance with section two of this article.

(3) "Commissioner" means the insurance commissioner of West Virginia.

(4) "Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical or mental disability.

(5) "Health plan" means any individual or group health care plan, subscription contract, evidence of coverage, certificate, health services plan; medical or hospital services plan as defined in article twenty-four of this chapter; accident and sickness insurance policy or certificate; managed care health insurance plan, or health maintenance organization subject to state regulation pursuant to article twenty-five-a of this chapter; which is offered, arranged, issued or administered in the state by an insurer authorized under this chapter, a third-party administrator or an intermediary. Health plan does not mean: (A) Coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. §1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. or Title XX of the Social Security Act, 42 U.S.C. §1397 et seq. (Medicaid), 5 U.S.C. §8901 et seq., or 10 U.S.C. §1071 et seq. (CHAMPUS); article sixteen, chapter five of this code (PEIA); (B) accident only, credit or disability insurance, long-term care insurance, CHAMPUS supplement, Medicare supplement, workers' compensation coverages or limited benefits policy as defined in article sixteen-e of this chapter; or (C) any a third-party
administrator or an intermediary acting on behalf of providers
as denoted in subparagraphs (A) and (B).

(6) "Insured" means a person who is provided health
insurance coverage or other health care services coverage from
an insurer under a health plan.

(7) "Insurer" means any person required to be licensed
under this chapter which offers or administers as a third party
administrator health insurance; operates a health plan subject to
this chapter; or provides or arranges for the provision of health
care services through networks or provider panels which are
subject to regulation as the business of insurance under this
chapter. "Insurer" also includes intermediaries. "Insurer" does
not include:

(A) Credit accident and sickness insurance;

(B) Accident and sickness policies which provide benefits
for loss of income due to disability;

(C) Any policy of liability of workers' compensation
insurance;

(D) Hospital indemnity or other fixed indemnity insurance;

(E) Life insurance, including endowment or annuity
contracts, or contracts supplemental thereto, which contain only
provisions relating to accident and sickness insurance that: (i)
Provide additional benefits in cases of death by accidental
means; or (ii) operate to safeguard the contracts against lapse,
in the event that the insured shall become totally and perma-
nently disabled as defined by the contract or supplemental
contract; and

(F) Property and casualty insurance.
"Provider contract" means any contract between a provider and (A) an insurer; (B) a health plan; or (C) an intermediary, relating to the provision of health care services.

"Retroactive denial" means the practice of denying previously paid claims by withholding or setting off against payments, or in any other manner reducing or affecting the future claim payments to the provider, or to seek direct cash reimbursement from a provider for a payment previously made to the provider.

"Provider" means a person or other entity which holds a valid license to provide specific health care services in this state.

"Intermediary" means a physician, hospital, physician-hospital organization, independent provider organization or independent provider network which receives compensation for arranging one or more health care services to be rendered by providers to insureds of a health plan or insurer. An intermediary does not include an individual provider or group practice that utilizes only its employees, partners or shareholders and their professional licenses to render services.

§33-45-2. Minimum fair business standards contract provisions required; processing and payment of health care services; provider claims; commissioner’s jurisdiction.

(a) Every provider contract entered into, amended, extended or renewed by an insurer on or after the first day of August, two thousand one, shall contain specific provisions which shall require the insurer to adhere to and comply with the following minimum fair business standards in the processing and payment of claims for health care services:
(1) An insurer shall either pay or deny a clean claim within forty days of receipt of the claim if submitted manually and within thirty days of receipt of the claim if submitted electronically, except in the following circumstances:

(A) Another payor or party is responsible for the claim;

(B) The insurer is coordinating benefits with another payor;

(C) The provider has already been paid for the claim;

(D) The claim was submitted fraudulently; or

(E) There was a material misrepresentation in the claim.

(2) Each insurer shall maintain a written or electronic record of the date of receipt of a claim. The person submitting the claim shall be entitled to inspect the record on request and to rely on that record or on any other relevant evidence as proof of the fact of receipt of the claim. If an insurer fails to maintain an electronic or written record of the date a claim is received, the claim shall be considered received three business days after the claim was submitted based upon the written or electronic record of the date of submittal by the person submitting the claim.

(3) An insurer shall, within thirty days after receipt of a claim, request electronically or in writing from the person submitting the claim any information or documentation that the insurer reasonably believes will be required to process and pay the claim or to determine if the claim is a clean claim. The insurer shall use all reasonable efforts to ask for all desired information in one request, and shall if necessary, within fifteen days of the receipt of the information from the first request, only request or require additional information one additional time if such additional information could not have been reasonably identified at the time of the original request or to
specifically identify a material failure to provide the information requested in the initial request. Upon receipt of the information requested under this subsection which the insurer reasonably believes will be required to adjudicate the claim or to determine if the claim is a clean claim, an insurer shall either pay or deny the claim within thirty days. No insurer may refuse to pay a claim for health care services rendered pursuant to a provider contract which are covered benefits if the insurer fails to timely notify the person submitting the claim within thirty days of receipt of the claim of the additional information requested unless such failure was caused in material part by the person submitting the claims: Provided, That nothing herein shall preclude such an insurer from imposing a retroactive denial of payment of such a claim if permitted by the provider contract unless such retroactive denial of payment of the claim would violate subdivision (7), subsection (a) of this section. This subsection does not require an insurer to pay a claim that is not a clean claim except as provided herein.

(4) Interest, at a rate of ten percent per annum, accruing after the forty-day period provided in subdivision (1), subsection (a) of this section owing or accruing on any claim under any provider contract or under any applicable law, shall be paid and accompanied by an explanation of the assessment on each claim of interest paid, without necessity of demand, at the time the claim is paid or within thirty days thereafter.

(5) Every insurer shall establish and implement reasonable policies to permit any provider with which there is a provider contract:

(A) To promptly confirm in advance during normal business hours by a process agreed to between the parties whether the health care services to be provided are a covered benefit; and
(B) To determine the insurer's requirements applicable to the provider (or to the type of health care services which the provider has contracted to deliver under the provider contract) for:

(i) Precertification or authorization of coverage decisions;

(ii) Retroactive reconsideration of a certification or authorization of coverage decision or retroactive denial of a previously paid claim;

(iii) Provider-specific payment and reimbursement methodology; and

(iv) Other provider-specific, applicable claims processing and payment matters necessary to meet the terms and conditions of the provider contract, including determining whether a claim is a clean claim.

(C) Every insurer shall make available to the provider within twenty business days of receipt of a request, reasonable access either electronically or otherwise, to all the policies that are applicable to the particular provider or to particular health care services identified by the provider. In the event the provision of the entire policy would violate any applicable copyright law, the insurer may instead comply with this subsection by timely delivering to the provider a clear explanation of the policy as it applies to the provider and to any health care services identified by the provider.

(6) Every insurer shall pay a clean claim if the insurer has previously authorized the health care service or has advised the provider or enrollee in advance of the provision of health care services that the health care services are medically necessary and a covered benefit, unless:
(A) The documentation for the claim provided by the person submitting the claim clearly fails to support the claim as originally authorized; or

(B) The insurer's refusal is because:

(i) Another payor or party is responsible for the payment;

(ii) The provider has already been paid for the health care services identified on the claim;

(iii) The claim was submitted fraudulently or the authorization was based in whole or material part on erroneous information provided to the insurer by the provider, enrollee, or other person not related to the insurer;

(iv) The person receiving the health care services was not eligible to receive them on the date of service and the insurer did not know, and with the exercise of reasonable care could not have known, of the person's eligibility status;

(v) There is a dispute regarding the amount of charges submitted; or

(vi) The service provided was not a covered benefit and the insurer did not know, and with the exercise of reasonable care could not have known, at the time of the certification that the service was not covered.

(7) A previously paid claim may be retroactively denied only in accordance with this subdivision.

(A) No insurance company may retroactively deny a previously paid claim unless:

(i) The claim was submitted fraudulently;

(ii) The claim contained material misrepresentations;
(iii) The claim payment was incorrect because the provider was already paid for the health care services identified on the claim or the health care services were not delivered by the provider;

(iv) The provider was not entitled to reimbursement;

(v) The service provided was not covered by the health benefit plan; or

(vi) The insured was not eligible for reimbursement.

(B) A provider to whom a previously paid claim has been denied by a health plan in accordance with this section shall, upon receipt of notice of retroactive denial by the plan, notify the health plan within forty days of the provider’s intent to pay or demand written explanation of the reasons for the denial.

(i) Upon receipt of explanation for retroactive denial, the provider shall reimburse the plan within thirty days for allowing an offset against future payments or provide written notice of dispute.

(ii) Disputes shall be resolved between the parties within thirty days of receipt of notice of dispute. The parties may agree to a process to resolve the disputes in a provider contract.

(iii) Upon resolution of dispute, the provider shall pay any amount due or provide written authorization for an offset against future payments.

(C) A health plan may retroactively deny a claim only for the reasons set forth in subparagraphs (iii), (iv), (v) and (vi), paragraph (A) of this subdivision (7) for a period of one year from the date the claim was originally paid. There shall be no time limitations for retroactively denying a claim for the reasons set forth in subparagraphs (i) and (ii) above.
(8) No provider contract may fail to include or attach at the time it is presented to the provider for execution:

(A) The fee schedule, reimbursement policy or statement as to the manner in which claims will be calculated and paid which is applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider on a routine basis; and

(B) All material addenda, schedules and exhibits thereto applicable to the provider or to the range of health care services reasonably expected to be delivered by that type of provider under the provider contract.

(9) No amendment to any provider contract or to any addenda, schedule or exhibit, or new addenda, schedule, exhibit, applicable to the provider to the extent that any of them involve payment or delivery of care by the provider, or to the range of health care services reasonably expected to be delivered by that type of provider, is effective as to the provider, unless the provider has been provided with the applicable portion of the proposed amendment, or of the proposed new addenda, schedule or exhibit, and has failed to notify the insurer within twenty business days of receipt of the documentation of the provider's intention to terminate the provider contract at the earliest date thereafter permitted under the provider contract.

(10) In the event that the insurer's provision of a policy required to be provided under subdivision (8) or (9) of this subsection would violate any applicable copyright law, the insurer may instead comply with this section by providing a clear, written explanation of the policy as it applies to the provider.

(11) The insurer shall complete a credential check of any new provider and accept or reject the provider within four months following the submission of the provider's completed
application: Provided, That time frame may be extended for an additional three months because of delays in primary source verification. The insurer shall make available to providers a list of all information required to be included in the application. A provider who is permitted by the insurer to provide services and who provides services during the credentialing period shall be paid for the services if the provider’s application is approved.

(b) Without limiting the foregoing, in the processing of any payment of claims for health care services rendered by providers under provider contracts and in performing under its provider contracts, every insurer subject to regulation by this article shall adhere to and comply with the minimum fair business standards required under subsection (a) of this section. The commissioner has jurisdiction to determine if an insurer has violated the standards set forth in subsection (a) of this section by failing to include the requisite provisions in its provider contracts. The commissioner has jurisdiction to determine if the insurer has failed to implement the minimum fair business standards set out in subdivisions (1) and (2), subsection (a) of this section in the performance of its provider contracts.

(c) No insurer is in violation of this section if its failure to comply with this section is caused in material part by the person submitting the claim or if the insurer’s compliance is rendered impossible due to matters beyond the insurer’s reasonable control, such as an act of God, insurrection, strike, fire, or power outages, which are not caused in material part by the insurer.

§33-45-3. Damages, attorney fees and costs available to providers upon insurer’s violation of article or breach of contract provisions.
Any provider who suffers loss as the result of an insurer's violation of any provision of this article or an insurer's breach of any provider contract provision required by this article is entitled to initiate an action to recover actual damages. The commissioner shall not be deemed to be a "trier of fact" for purposes of this section.

§33-45-4. Providers invoking rights protected.

No insurer or its network, provider panel or intermediary may terminate or fail to renew the employment or other contractual relationship with a provider, or any provider contract, or otherwise penalize any provider, for invoking any of the provider's rights under this article or under the provider contract.

§33-45-5. Commissioner authorized to propose rules.

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

§33-45-6. Commissioner's authority.

Nothing in this article shall limit or modify the commissioner's duties and authority under article two of this chapter.

§33-45-7. Contractual alternative reimbursement arrangements.

This article shall not apply to provider contracts in which payment is rendered by periodic, capitation or withhold payments.


(a) The provisions of this article do not apply to claims that are not covered under the terms of the health plan.
(b) Nothing in this article shall preclude the right of a provider or insurer to pursue any other administrative, civil or criminal proceedings or remedies permitted under state or federal law.

(c) The provisions of this article do not apply when there is a good faith dispute about the legitimacy of amount of the claim, or when there is a reasonable basis supported by specific information that such claim was submitted fraudulently or with material misrepresentation.

(d) An insurer shall not be considered to be in violation of this article if the insurer’s failure to comply is caused in material part by the person submitting the claim or the health insurer’s compliance is rendered impossible due to matters beyond the insurer’s reasonable control.

(e) A provider shall not be considered to be in violation of this article if the failure to comply is caused in material part by the insured or the provider’s compliance is rendered impossible due to matters beyond the provider’s reasonable control.

(f) The provisions of this article do not apply to services provided outside the state.
two-a, relating to reimbursement of the compact committee official representing West Virginia on the interstate compact commission.

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

That article twenty-four, 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 two-a, to read as follows:

**ARTICLE 24. INTERSTATE COMPACT ON LICENSURE OF PARTICIPANTS IN LIVE HORSE RACING WITH PARI-MUTUEL WAGERING.**

**§19-24-2a. Reimbursement for compact committee official member.**

1 The duly appointed and designated official state representative on the compact committee shall be reimbursed for all actual expenses and expenditures incurred and expended in the performance of his or her official duties as a compact committee member, notwithstanding any provision set forth to the contrary in article twenty-three of this chapter nor any provision set forth to the contrary in section eleven, article three, chapter twelve of this code or any rules promulgated pursuant thereto.
AN ACT to amend and reenact section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter, all relating to the West Virginia investment management board and its investment management and loans for business and industrial development and availability of funds and interest rates; correcting and clarifying inconsistencies; deleting outdated provisions regarding conflict of interest provision regarding board members and state depositories; providing for the common investment of pension, workers' compensation and other assets in board-created vehicles; changing date of annual meeting; providing for staggered terms of board members; conforming statutory trust language to trust indenture; providing for appropriate fees to be assessed against all assets invested and managed by the board; amending and clarifying certain restrictions on investments; requiring the board to make certain loans to the West Virginia economic development authority; specifying limits and conditions for same; clarifying that board members bear no fiduciary responsibility for such loans made to the economic development authority; and rebalancing of assets when investment limitations exceeded.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-a, two, three, four, five, six, eight, nine, nine-a, nine-e, ten, eleven and twelve, article six of said chapter be amended and reenacted, all to read as follows:

Article
  1. State Depositories.
  6. West Virginia Investment Management Board.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-8. Conflict of interest.
No depository in this state may serve or be eligible for designation as a state depository if any employee of the treasurer's office, or a spouse or minor child of that employee, is an officer, director or employee of the depository or owns greater than two percent of the depository either in his or her own name or beneficially or an interest in the depository. An employee of the treasurer's office shall disclose the circumstance, if any, in the sworn statement required under the provisions of section one, article one, chapter six-b of this code.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1a. Legislative findings.
§12-6-2. Definitions.
§12-6-3. West Virginia investment management board continued; body corporate; trust fund board; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.
§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.
§12-6-5. Powers of the board.
§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.
§12-6-8. Investment funds established; management thereof.
§12-6-9. Fees for service.
§12-6-9a. Trust indenture.
§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.
§12-6-10. Restrictions on investments.
§12-6-12. Investment restrictions.

§12-6-1a. Legislative findings.

(a) The Legislature hereby finds and declares that all the public employees covered by the public employees retirement
system, the teachers retirement system, the West Virginia state
police retirement system, the death, disability and retirement
fund of the division of public safety, the judges’ retirement
system and the deputy sheriff’s retirement system should
benefit from a prudent and conscientious staff of financial
professionals dedicated to the administration, investment and
management of those employees’ and employers’ financial
contributions and that an independent board and staff should be
immune to changing political climates and should provide a
stable and continuous source of professional financial invest-
ment and management.

(b) The Legislature finds and declares that teachers and
other public employees throughout the state are experiencing
economic difficulty and that in order to reduce this economic
hardship on these dedicated public employees and to help foster
sound financial practices, the West Virginia investment
management board is given the authority to develop, implement
and maintain an efficient and modern system for the investment
and management of the state’s money. The Legislature further
finds that in order to implement these sound fiscal policies, the
West Virginia investment management board shall operate as
an independent board with its own full-time staff of financial
professionals, immune to changing political climates, in order
to provide a stable and continuous source of professional
financial management.

(c) The Legislature hereby finds and declares further that
experience has demonstrated that prudent investment provides
diversification and beneficial return not only for public employ-
ees but for all citizens of the state and that in order to have
access to this sound fiscal policy, public employee and em-
ployer contributions to the 401(a) plans are declared to be made
to an irrevocable trust on behalf of each plan, available for no
use or purpose other than for the benefit of those public
employees.
(d) The Legislature hereby finds and declares further that the workers' compensation funds and coal-workers' pneumoconiosis fund are trust funds to be used exclusively for those workers, miners and their beneficiaries who have sacrificed their health in the performance of their jobs and further finds that the assets available to pay awarded benefits should be prudently invested so that awards may be paid.

(e) The Legislature hereby finds and declares further that an independent public body corporate with appropriate governance shall be the best means of assuring prudent financial management of these funds under rapidly changing market conditions and regulations.

(f) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia investment management board, created and established by this article, is acting in all respects for the benefit of the state's public employees and ultimately the citizens of the state and the West Virginia investment management board is empowered by this article to act as trustee of the irrevocable trusts created by this article and to manage and invest other state funds.

(g) The Legislature hereby finds and declares further that the standard of care and prudence applied to trustees, the conduct of the affairs of the irrevocable trusts created by this article and the investment of other state funds is intended to be that applied to the investment of funds as described in the "uniform prudent investor act" codified as article six-c, chapter forty-four of this code and as described in section eleven of this article.

(h) The Legislature further finds and declares that the West Virginia supreme court of appeals declared the "West Virginia Trust Fund Act" unconstitutional in its decision rendered on the twenty-eighth day of March, one thousand nine hundred
ninety-seven, to the extent that it authorized investments in corporate stock, but the court also recognized that there were other permissible constitutional purposes of the "West Virginia Trust Fund Act" and that it is the role of the Legislature to determine those purposes consistent with the court's decision and the constitution of West Virginia.

(i) The Legislature hereby further finds and declares that it is in the best interests of the state and its citizens to create a new investment management board in order to: (1) Be in full compliance with the provisions of the constitution of West Virginia; and (2) protect all existing legal and equitable rights of persons who have entered into contractual relationships with the West Virginia board of investments and the West Virginia trust fund.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;

(2) "Board" means the governing body for the West Virginia investment management board and any reference elsewhere in this code to board of investments or West Virginia trust fund means the board as defined in this subdivision;

(3) "Consolidated fund" means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

(4) "401(a) plan" means a plan which is described in section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been desig-
15 nated to hold assets of the plan in trust pursuant to the provi-
16 sions of section nine-a of this article;

17 (5) “Local government funds” means the moneys of a political subdivision, including policemen’s pension and relief funds, firemen’s pension and relief funds and volunteer fire departments, transferred to the board for deposit;

18 (6) “Participant plan” means any plan or fund subject now or hereafter to subsection (a), section nine-a, article six of this chapter;

19 (7) “Political subdivision” means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

20 (8) “Trustee” means any member serving on the West Virginia investment management board: Provided, That in section nine-a of this article in which the terms of the trusts are set forth, “trustee” means the West Virginia investment management board;

21 (9) “Securities” means all bonds, notes, debentures or other evidences of indebtedness and other lawful investment instruments; and

22 (10) “State funds” means all moneys of the state which may be lawfully invested except the “school fund” established by section four, article XII of the state constitution.

§12-6-3. West Virginia investment management board continued; body corporate; trust fund board; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual
and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

(a) There is hereby continued the West Virginia investment management board. The board is created as a public body corporate and established to provide prudent fiscal administration, investment and management for the funds of the participant plans and any other funds managed by the board.

(b) The board shall be governed by a board of trustees, consisting of thirteen members:

(1) Nominations made to the West Virginia trust fund board and the West Virginia board of investments shall remain in effect and are hereby specifically reauthorized and those members shall be members of the investment management board and shall serve out the remainder of their respective terms subject to the advice and consent of the Senate: Provided, That prior appointments which have been confirmed by the Senate are hereby specifically reauthorized without further action of the Senate.

(2) Any appointment is effective immediately upon appointment by the governor with respect to voting, constituting a quorum, receiving compensation and expenses and all other rights and privileges of the trustee position. All appointees shall have experience in pension management, institutional management or financial markets and one trustee shall be an attorney experienced in finance and investment matters and one trustee shall be a certified public accountant.

(3) The governor, the state auditor and the state treasurer or their designees shall serve as members of the board. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The governor, the
29 auditor and the treasurer or their designees are subject to all
duties, responsibilities and requirements of the provisions of
this article, including, but not limited to, the provisions of
subsections (e) and (f), section four of this article.

(c) At the end of each trustee's term, the governor may
reappoint or appoint a successor who shall serve for a term
ending on the thirty-first day of January in the sixth year
following the year of his or her appointment: Provided, That for
all terms ending in the year two thousand one, two appoint-
ments shall be for two-year terms; two appointments shall be
for three-year terms; one shall be for a four-year term; and two
shall be for six-year terms. Except for vacancy appointments
made pursuant to subsection (d) of this section, all subsequent
appointments shall be for terms ending on the thirty-first day of
January in the sixth year following the year of appointment. No
more than six of the ten appointed trustees may belong to the
same political party.

(d) In the event of a vacancy among the trustees, an
appointment shall be made by the governor to fill the unexpired
term.

(e) The governor may remove any trustee, other than
trustees who serve by virtue of their elective office, in case of
gross negligence or misfeasance and may declare that position
vacant and may appoint a person for the vacancy as provided in
subsection (d) of this section.

(f) Each trustee, other than those enumerated in subsection
(b), subdivision (3) of this section, is entitled to receive and, at
the trustee's option, the board shall pay to the trustee compen-
sation in the amount of five thousand dollars per year and
additional compensation in the amount of five hundred dollars
per meeting attended by the trustee in excess of the four
quarterly meetings required by this section. In addition, all
trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall give ten days' notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (i) of this section and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The board shall hold an annual meeting before the start of the fiscal year. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures for the year.

(i) Pursuant to subsection (j) of this section, the board shall meet with committees representing the participant plans to discuss the board's drafting, reviewing or modifying the written investment policy of the trust with respect to that committee's participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) The West Virginia consolidated public retirement board shall promulgate procedural rules by which each 401(a) plan for which the board is trustee, shall designate an individual representative of each 401(a) plan and the West Virginia
workers' compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers' compensation fund shall designate an individual representative of each fund.

(2) On or before the first day of June of each year, the consolidated public retirement board shall submit in writing to the board the names of the six designated representatives of the 401(a) plans and the workers' compensation commission shall submit the names of the two representatives.

(3) Each designated representative shall provide to the board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July of each year the names of no more than three persons comprising a committee representing the beneficiaries of that representative's participant plan.

(j) At its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subdivision (1), subsection (i) of this section, for the purpose of receiving input from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for investment of the funds of the participant plans. In developing the investment policy statement, the trustees shall receive each committee's stated objectives and policies regarding the risk tolerances and return expectations of each participant plan, with attention to the factors enumerated in section twelve of this article, in order to provide for the continuing financial security of the trusts and the participant plans. The board may meet with
the committees or any of them at its quarterly and additional meetings for the same purpose.

(k) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subdivision (1), subsection (i) of this section. The representatives are subject to any rules, bylaws, guidelines, requirements and standards promulgated by the board. The representatives shall observe standards of decorum established by the board. The representatives are subject to the same code of conduct applicable to the trustees and are subject to all board rules and bylaws. The representatives are also subject to any requirements of confidentiality applicable to the trustees. Each representative is liable for any act which he or she undertakes which violates any rule, bylaw or statute governing ethical standards, confidentiality or other standard of conduct imposed upon the trustees or the representatives. Any meeting of the board may be closed, upon adoption of a motion by any trustee, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters or to maintain confidentiality when confidentiality is in the best interest of the beneficiaries of the trusts.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

(a) The management and control of the board shall be vested solely in the trustees in accordance with the provisions of this article.

(b) The governor shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The
vice chairman shall preside at all meetings in the absence of the
chairman. Annually, the trustees shall elect a secretary, who
need not be a member of the board, to keep a record of the
proceedings of the board.

(c) The trustees shall appoint a chief executive officer of
the board and shall fix his or her duties and compensation. The
chief executive officer shall have five years' experience in
investment management with public or private funds within the
ten years next preceding the date of appointment. The chief
executive officer additionally shall have academic degrees,
professional designations and other investment management or
investment oversight or institutional investment experience in
a combination the trustees consider necessary to carry out the
responsibilities of the chief executive officer position as defined
by the trustees.

(d) The trustees shall retain an internal auditor to report
directly to the trustees and shall fix his or her compensation.
The internal auditor shall be a certified public accountant with
at least three years experience as an auditor. The internal
auditor shall develop an internal audit plan, with board ap-
proval, for the testing of procedures and the security of transac-
tions.

(e) Each trustee shall give a separate fiduciary or surety
bond from a surety company qualified to do business within this
state in a penalty amount of one million dollars for the faithful
performance of his or her duties as a trustee. The board shall
purchase a blanket bond for the faithful performance of its
duties in the amount of fifty million dollars or in an amount
equivalent to one percent of the assets under management,
whichever is greater. The amount of the blanket bond is in
addition to the one million dollar individual bond required of
each trustee by the provisions of this section. The board may
require a fiduciary or surety bond from a surety company
42 qualified to do business in this state for any person who has
43 charge of, or access to, any securities, funds or other moneys
44 held by the board and the amount of the fiduciary or surety
45 bond shall be fixed by the board. The premiums payable on all
46 fiduciary or surety bonds shall be an expense of the board.

(f) The trustees and employees of the board are not liable
48 personally, either jointly or severally, for any debt or obligation
49 created by the board: Provided, That the trustees and employees
50 of the board are liable for acts of misfeasance or gross negli-
51 gence.

(g) The board is exempt from the provisions of sections
7 seven and eleven, article three, chapter twelve of this code and
54 article three, chapter five-a of said code: Provided, That the
55 trustees and employees of the board are subject to purchasing
56 policies and procedures which shall be promulgated by the
57 board. The purchasing policies and procedures may be promul-
58 gated as emergency rules pursuant to section fifteen, article
59 three, chapter twenty-nine-a of this code.

(h) Any employee of the West Virginia trust fund who
61 previously was an employee of another state agency may return
62 to the public employees retirement system pursuant to section
63 eighteen, article ten, chapter five of this code and may elect to
64 either: (1) Transfer to the public employees retirement system
65 his or her employee contributions, with accrued interest and, if
66 vested, his or her employer contributions, with accrued interest
67 and retain as credited state service all time served as an
68 employee of the West Virginia trust fund; or (2) retain all
69 employee contributions with accrued interest and, if vested, his
70 or her employer contributions with interest and forfeit all
71 service credit for the time served as an employee of the West
72 Virginia trust fund.

§12-6-5. Powers of the board.
The board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The board may:

1. Adopt and use a common seal and alter it at pleasure;
2. Sue and be sued;
3. Enter into contracts and execute and deliver instruments;
4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
6. Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;
7. Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits and in any other lawful investments;
8. Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
9. Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of the securities to the original seller at a stated price;
10. Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of the securities by the board at a stated price;
28. (11) Consolidate and manage moneys, securities and other
assets of the other funds and accounts of the state and the
moneys of political subdivisions which may be made available
to it under the provisions of this article;

32. (12) Enter into agreements with political subdivisions of the
state whereby moneys of the political subdivisions are invested
on their behalf by the board;

35. (13) Charge and collect administrative fees from political
subdivisions for its services;

37. (14) Exercise all powers generally granted to and exercised
by the holders of investment securities with respect to manage-
ment of the investment securities;

40. (15) Contract with one or more banking institutions in or
outside the state for the custody, safekeeping and management
of securities held by the board;

43. (16) Make and, from time to time, amend and repeal
bylaws, regulations and procedures not inconsistent with the
provisions of this article;

46. (17) Hire its own employees, consultants, managers and
advisors as it considers necessary and fix their compensation
and prescribe their duties;

49. (18) Develop, implement and maintain its own banking
accounts and investments;

51. (19) Do all things necessary to implement and operate the
board and carry out the intent of this article;

53. (20) Require the state auditor and treasurer to transmit state
funds on a daily basis for investment: Provided, That money
55 held for meeting the daily obligations of state government need
56 not be transferred;

57 (21) Upon request of the treasurer, transmit funds for
58 deposit in the state treasury to meet the daily obligations of
59 state government;

60 (22) Establish one or more investment funds for the purpose
61 of investing the funds for which it is trustee, custodian or
62 otherwise authorized to invest pursuant to this article. Interests
63 in each fund shall be designated as units and the board shall
64 adopt industry standard accounting procedures to determine
65 each fund’s unit value. The securities in each investment fund
66 are the property of the board and each fund shall be considered
67 an investment pool or fund and may not be considered a trust
68 nor may the securities of the various investment funds be
69 considered held in trust. However, units in an investment fund
70 established by or sold by the board and the proceeds from the
71 sale or redemption of any unit may be held by the board in its
72 role as trustee of the participant plans; and

73 (23) Notwithstanding any other provision of the code to the
74 contrary, conduct investment transactions, including purchases,
75 sales, redemptions and income collections, which shall not be
76 treated by the auditor as recordable transactions on the state’s
77 accounting system.

§12-6-6. Annual audits; reports and information to constitutional
and legislative officers, council of finance and admin-
istration, consolidated public retirement board,
workers’ compensation fund and coal-workers’
pneumoconiosis fund; statements and reports open
for inspection.

1 (a) The board shall cause an annual financial and compli-
2 ance audit of the assets managed by the board to be made by a
3 certified public accounting firm which has a minimum staff of
(b) The board shall produce monthly financial statements for the assets managed by the board and cause them to be delivered to each member of the board and the executive secretary of the consolidated public retirement board as established in sections one and two, article ten-d, chapter five of this code and to the commissioner of the bureau of employment programs as administrator of the workers' compensation fund and coal-workers' pneumoconiosis fund as established in section one, article one, chapter twenty-three of this code and section one, article three of said chapter and section seven, article four-b of said chapter.

(c) The board shall deliver in each quarter to the council of finance and administration and the consolidated public retirement board a report detailing the investment performance of the 401(a) plans.

(d) The board shall cause an annual audit of the reported returns of the assets managed by the board to be made by an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section. The board shall furnish copies of the audit report to the governor, state treasurer, state auditor, president of the Senate, speaker of
the House of Delegates, council of finance and administration and consolidated public retirement board.

(e) The board shall provide any other information requested in writing by the council of finance and administration.

(f) All statements and reports with respect to participant plans required in this section shall be available for inspection by the members and beneficiaries and designated representatives of the participant plans.

§12-6-8. Investment funds established; management thereof.

(a) There is hereby continued a special investment fund to be managed by the board and designated as the “consolidated fund”.

(b) Each board, commission, department, official or agency charged with the administration of state funds may make moneys available to the board for investment.

(c) Each political subdivision of this state through its treasurer or equivalent financial officer may enter into agreements with the board for the investment of moneys of the political subdivision. Any political subdivision may enter into an agreement with any state agency from which it receives funds to allow the funds to be transferred to their investment account with the investment management board.

(d) Moneys held in the various funds and accounts administered by the board shall be invested as permitted by this article and subject to the restrictions contained in this article. For the consolidated fund, the treasurer shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall report the earnings on the various funds under management to the treasurer at the times determined by the treasurer. The board
shall also establish rules for the administration of the various funds and accounts established by this section as it considers necessary for the administration of the funds and accounts, including, but not limited to: (1) The specification of amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; and (2) creation of reserves for losses: Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest those moneys in accordance with the restrictions specially applicable to those moneys.

§12-6-9. Fees for service.

The board may charge fees, which may be subtracted from the total return, for the reasonable and necessary expenses incurred by the investment management board in rendering services. All fees which are dedicated or identified or readily identifiable to an entity, plan or fund shall be charged to that entity, plan or fund and all other fees shall be charged as a percentage of assets under management. At its annual meeting, the board shall adopt a fee schedule and a budget reflecting fee structures.

§12-6-9a. Trust indenture.

The provisions of the trust indenture entered into by the governor on the first day of July, one thousand nine hundred ninety-six, with the West Virginia trust fund, inc., acting as the trustee, are superseded by the following provisions:

(a) The board shall continue to hold each of the participant plans specified by this article in a separate irrevocable trust as trustee pursuant to the terms and provisions set forth in this section and with the earnings and losses accounted for and
charged individually to each participant plan and trust: Provided: That the board shall be authorized to invest the assets held in each participant plan in any investment fund even though the board may also invest non-401(a) moneys in the investment fund. Participant plans, each declared by this section to be held in a separate irrevocable trust, include, but are not limited to, the following and any other plans that may be added to this section or otherwise designated by the Legislature from time to time:

(1) The public employees' retirement system;

(2) The teachers' retirement system;

(3) The West Virginia state police retirement system;

(4) The death, disability and retirement fund of the division of public safety;

(5) The judges' retirement system;

(6) The deputy sheriffs' retirement system;

(7) The pneumoconiosis fund;

(8) The workers' compensation fund; and

(9) The wildlife endowment fund.

(b) The Legislature hereby reserves the following rights and powers:

(1) The right by supplemental agreement to amend, modify or alter the terms of the trusts established by this section without consent of the trustee, or any beneficiary, except that no amendment to a trust which holds any 401(a) plan moneys may be made which allows at any time for any part of the corpus or income (other than the part that is required to pay taxes and
administration expenses) to be used for, or diverted to, purposes other than for the exclusive benefit of the employees or their beneficiaries in accordance with the requirements of section 401(a)(2) of the Internal Revenue Code, as it may be amended from time to time; and

(2) The right to request and receive additional information from the trustee at any time.

(c) In the administration of the trusts created by this article, the trustee has the following powers:

(1) To purchase, retain, hold, transfer and exchange and to sell, at public or private sale, the whole or any part of the trust estate upon such terms and conditions as it considers advisable;

(2) To invest and reinvest the trust estate or any part of the trust estate, in any kind of property, real or personal, including, but not limited to, mortgage or mortgage participations, common stocks, preferred stocks, common trust funds, investment funds established by the board, bonds, notes or other securities, notwithstanding the provisions of articles five and six, chapter forty-four of this code;

(3) To carry the securities and other property held in trust either in the name of the trustee or in the name of its nominee;

(4) To vote, in person or by proxy, all securities held in trust, to join in or to dissent from and oppose the reorganization, recapitalization, consolidation, merger, liquidation or sale of corporations or property; to exchange securities for other securities issued in connection with or resulting from any transaction; to pay any assessment or expense which the trustee considers advisable for the protection of its interest as holder of the securities; to deposit securities in any voting trust or with any protective or like committee or with a trustee depository; to
exercise any option appurtenant to any securities for the
conversion of any securities into other securities; and to
exercise or sell any rights issued upon or with respect to the
securities of any corporation, all upon terms the trustee consid-
ers advisable;

(5) To prosecute, defend, compromise, arbitrate or other-
wise adjust or settle claims in favor of or against the trustee or
other trust estate;

(6) To employ and pay from the trusts legal and investment
counsel, brokers and any other assistants and agents the trustee
considers advisable; and

(7) To develop, implement and modify an asset allocation
plan for each participant plan. The asset allocation plans shall
be implemented within the management and investment of the
individual trusts.

(d) All trust income shall be free from anticipation,
alienation, assignment or pledge by, and free from attachment,
execution, appropriation or control by or on behalf of, any and
all creditors of any beneficiary by any proceeding at law, in
equity, in bankruptcy or insolvency.

(e) Notwithstanding any other provision of this article, in
the case of a trust which holds any 401(a) plan’s money, it is
impermissible at any time for any part of the corpus or income
to be (within the taxable year or thereafter) used for, or diverted
to, purposes other than the exclusive benefit of the employees
and their beneficiaries in accordance with the requirements of
section 401(a)(2) of the Internal Revenue Code, as it may be
amended from time to time.

(f) The trustee may receive any other property, real or
personal, tangible or intangible, of any kind whatsoever, that
may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to the applicable trust and all the properties shall be held, managed, invested and administered by the trustee as provided in this article.

(g) The trustee shall promptly cause to be paid to the state from the applicable trust the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(h) The trustee shall render an annual accounting to the governor not more than one hundred twenty days following the close of the fiscal year of each trust.

(i) No trust shall be invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but each trust shall continue for the time necessary to accomplish the purposes for which it is established.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

(a) The Legislature hereby finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that a business and industrial development loan program provides for economic growth and stimulation within the state; that loans from pools established in the consolidated fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the board and West Virginia economic development authority board. This section is enacted in view of these findings.

(b) The board shall make available, subject to cash availability, in the form of a revolving loan, up to one hundred fifty
14 million dollars from the consolidated fund to loan the West
15 Virginia economic development authority for business or
16 industrial development projects authorized by section seven,
17 article fifteen, chapter thirty-one of this code and to consolidate
18 existing loans authorized to be made to the West Virginia
19 economic development authority pursuant to this section and
20 pursuant to section twenty, article fifteen, chapter thirty-one of
21 this code which authorizes a one hundred fifty million dollar
22 revolving loan and article eighteen-b, chapter thirty-one of this
code which authorizes a fifty million dollar investment pool:
Provided, That the West Virginia economic development
25 authority may not loan more than fifteen million dollars for any
26 one business or industrial development project. The revolving
27 loan authorized by this subsection shall be secured by one note
28 at a variable interest rate equal to the twelve-month average of
the board’s yield on its cash liquidity pool. The rate shall be set
29 on the first day of July and the rate shall be adjusted annually
30 on the same date. The maximum annual adjustment may not
32 exceed one percent. Monthly payments made by the West
33 Virginia economic development authority to the board shall be
34 calculated on a one hundred twenty-month amortization. The
35 revolving loan shall be secured by a security interest that
36 pledges and assigns the cash proceeds of collateral from all
loans under this revolving loan pool. The West Virginia
38 economic development authority may also pledge as collateral
39 certain revenue streams from other revolving loan pools which
source of funds does not originate from federal sources or from
the board.

The outstanding principal balance of the revolving loan
from the board to the West Virginia economic development
authority may at no time exceed one hundred three percent of
the aggregate outstanding principal balance of the business and
industrial loans from the West Virginia economic development
authority to economic development projects funded from this
revolving loan pool. This provision shall be certified annually
by an independent audit of the West Virginia economic
development authority financial records.

(c) The interest rates and maturity dates on the loans made
by the West Virginia economic development authority for
business and industrial development projects authorized by
section seven, article fifteen, chapter thirty-one of this code
shall be at competitive rates and maturities as determined by the
West Virginia economic development authority board.

(d) Any and all outstanding loans made by the board, or any
predecessor entity, to the West Virginia economic development
authority shall be refunded by proceeds of the revolving loan
contained in this section and no loans may be made hereafter by
the board to the West Virginia economic development authority
pursuant to section twenty, article fifteen, chapter thirty-one of
this code or article eighteen-b of said chapter.

(e) The trustees of the board shall bear no fiduciary
responsibility as provided in section eleven of this article with
specific regard to the revolving loan contemplated in this
section.

§12-6-10. Restrictions on investments.

Notwithstanding any other provision in this code, moneys
on deposit in the consolidated fund shall be invested as permit-
ted by section twelve of this article subject to the restrictions
and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the
consolidated fund be invested in any bond, note, debenture,
commercial paper or other evidence of indebtedness of any
private corporation or association;
(2) At no time shall more than five percent of the consolidated fund be invested in securities issued by a single private corporation or association; and

(3) At no time shall less than fifteen percent of the consolidated fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States of America.


Any investments made under this article shall be made in accordance with the provisions of the "Uniform Prudent Investor Act" codified as article six-c, chapter forty-four of this code and is further subject to the following requirements:

(a) Trustees shall discharge their duties with respect to the 401(a) plans for the exclusive purpose of providing benefits to participants and their beneficiaries;

(b) Trustees shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(c) Trustees shall defray reasonable expenses of investing and operating the funds under management; and

(d) Trustees shall discharge their duties in accordance with the documents and instruments governing the trusts or other funds under management insofar as the documents and instruments are consistent with the provisions of this article.

(e) The duties of the board apply only with respect to those assets deposited with or otherwise held by it.

§12-6-12. Investment restrictions.
(a) The board shall hold in equity investments no more than sixty percent of the assets managed by the board and no more than sixty percent of the assets of any individual participant plan or the consolidated fund.

(b) The board shall hold in international securities no more than twenty percent of the assets managed by the board and no more than twenty percent of the assets of any individual participant plan or the consolidated fund.

(c) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the equity securities of any single company or association: Provided, That if a company or association has a market weighting of greater than five percent in the Standard & Poor's 500 index of companies, the board may hold securities of that equity equal to its market weighting.

(d) The board shall at all times limit its asset allocation and types of securities to the following:

(1) The board may not hold more than twenty percent of the aggregate participant plan assets in commercial paper. Any commercial paper at the time of its acquisition shall be in one of the two highest rating categories by an agency nationally known for rating commercial paper;

(2) At no time shall the board hold more than seventy-five percent of the assets managed by the board in corporate debt. Any corporate debt security at the time of its acquisition shall be rated in one of the six highest rating categories by a nationally recognized rating agency; and

(3) No security may be purchased by the board unless the type of security is on a list approved by the board. The board may modify the securities list at any time and shall give notice
31 of that action pursuant to subsection (g), section three of this
32 article and shall review the list at its annual meeting.

33 (e) Notwithstanding the investment limitations set forth in
34 this section, it is recognized that the assets managed by the
35 board, or the assets of the consolidated fund or participant
36 plans, whether considered in the aggregate or individually, may
37 temporarily exceed the investment limitations in this section
38 due to market appreciation, depreciation and rebalancing
39 limitations. Accordingly, the limitations on investments set
40 forth in this section shall not be considered to have been
41 violated if the board rebalances the assets it manages or the
42 assets of the consolidated fund or participant plans, whichever
43 is applicable, to comply with the limitations set forth in this
44 section at least once every six months based upon the latest
45 available market information and any other reliable market data
46 that the board considers advisable to take into consideration.

47 (f) The board, at the annual meeting provided for in
48 subsection (h), section three of this article, shall review,
49 establish and modify, if necessary, the investment objectives of
50 the individual participant plans as incorporated in the invest-
51 ment policy statements of the respective trusts so as to provide
52 for the financial security of the trust funds giving consideration
53 to the following:

54 (1) Preservation of capital;
55 (2) Diversification;
56 (3) Risk tolerance;
57 (4) Rate of return;
58 (5) Stability;
59 (6) Turnover;
60 (7) Liquidity; and
61 (8) Reasonable cost of fees.
AN ACT to amend and reenact section one, article five, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the name of Pinecrest hospital to Jackie Withrow hospital, contingent upon receipt of funds from the department of health and human resources; authorizing the department of health and human resources to provide funding for the name change; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JACKIE WITHROW HOSPITAL.

§26-5-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

(a) The tuberculosis sanitarium heretofore established at Beckley, for the care and treatment of persons afflicted with tuberculosis, shall be continued and shall be known as the Jackie Withrow hospital, and shall be managed, directed and controlled as prescribed in article one, chapter twenty-five and
in section eight, article one, chapter sixteen of this code:
Provided, That the name change shall not become effective
until ninety days after the department of health and human
resources has provided to the hospital and the hospital has
received an additional one hundred thousand dollars over and
above the total dollar amount provided to the hospital from the
state from all sources for the fiscal year ending the thirtieth day
of June, two thousand one. The one hundred thousand dollars
shall be used by the hospital to offset the additional expenses
incurred in changing the name of the hospital, including, but not
limited to, software changes, printing costs for documents and
stationery, change of name on medicaid certificate, change of
signs and equipment which stamps the name of the hospital and
the cost of a plaque, bust and other expenses associated with the
change of name. The department of health and human resources
shall provide this money to the hospital in one lump sum within
one hundred eighty days from the effective date of the amend-
ments made to this section in the two thousand one regular
session of the Legislature or the name change contemplated
herein shall not become effective. The chief executive officer
of the hospital shall be the superintendent, who must be a
college graduate and have a minimum of two years’ experience
in either hospital administration, health services administration
or business administration with broad knowledge of accounting,
purchasing and personnel practices as related to the rendition of
health and health related services.

(b) A superintendent is the person having the fiscal respon-
sibility of the hospital and the authority to manage and adminis-
ter the financial, business and personnel affairs of the hospital.

A clinical director is the person having the responsibility
for decisions involving clinical and medical treatment of
patients, and who shall be a duly qualified physician licensed to
practice medicine in the state of West Virginia.
(c) The provisions of this section relating to the qualification of persons eligible to serve as superintendent shall not apply to any person serving in the capacity of business manager on the effective date hereof, and who has served in that capacity for at least six consecutive months next preceding the effective date.

CHAPTER 173

(Com. Sub. for S. B. 404 — By Senators McCabe, Anderson and Unger)

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

AN ACT to amend and reenact sections four, five and fourteen, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the jobs investment trust fund and board; changing board composition; defining participation in board meetings; and exempting new millennium fund from certain requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

§12-7-14. Exemption from certain requirements; audit.
§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

(a) The jobs investment trust board is continued. The board is a public body corporate and established to improve and otherwise promote economic development in this state.

(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the president of West Virginia university or his or her designee; the president of Marshall university or his or her designee; the chancellor of the higher education policy commission or his or her designee; the executive director of the West Virginia housing development fund; and the executive director of the West Virginia development office. One member shall be appointed by the governor from a list of two names submitted by the board of directors of the housing development fund. One member shall be appointed by the governor from a list of two names submitted by the commissioner of the division of tourism. The other six members shall be appointed from the general public by the governor. Of the members of the general public appointed by the governor, one shall be an attorney with experience in finance and investment matters, one shall be a certified public accountant, one shall be a representative of labor, one shall be experienced or involved in innovative business development, two shall be present or past executive officers of companies listed on a major stock exchange or large privately held companies: Provided, That all appointments made pursuant to the provisions of this article shall be by and with the advice and consent of the Senate.

(c) A vacancy on the board shall be filled by appointment by the governor for the unexpired term in the same manner as the original appointment. Any person appointed to fill a vacancy serves only for the unexpired term.
(d) 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.

(e) The chairman of the board shall be elected by the board from among the members of the board.

(f) Seven members of the board is a quorum. No action may be taken by the board except upon the affirmative vote of at least a majority of those members present or participating by such other means as described in subsection (g) of this section, but in no event fewer than six of the members serving on the board.

(g) Members of the board may participate in a meeting of the board by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other and participation in a board meeting pursuant to this subsection shall constitute presence in person at such meeting.

(h) The members of the board, including the chairman, may receive no compensation for their services as members of the board but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

(i) The board shall meet on a quarterly basis or more often if necessary.

(j) The terms of the board members appointed by the governor first taking office on or after the one thousand nine hundred ninety-two effective date of the jobs investment trust act expired as designated by the governor at the time of the nomination, two at the end of the first year, two at the end of
the second year, two at the end of the third year and two at the
end of the fourth year. These original appointments were for,
and each subsequent appointment was and shall be for, a full
four-year term. Any member whose term has expired serves
until his or her successor has been duly appointed and qualified.
Any member is eligible for reappointment.

(k) Additionally, one member of the West Virginia House
of Delegates and one member of the West Virginia Senate shall
serve as advisory members of the jobs investment trust board
and, as advisory members, shall be ex officio, nonvoting
advisory members. The governor shall appoint the two legisla-
tive ex officio advisory members who shall serve for four years
or such shorter time as he or she continues to be a West
Virginia legislator.

§12-7-5. Management and control of jobs investment trust vested
in board; officers; liability; authority of executive
director to act on behalf of board; relationship to
higher education institutions.

(a) It is the duty of the board to manage and control the jobs
investment trust. In order to carry out the day-to-day manage-
ment and control of the trust and effectuate the purposes of this
article, the board shall appoint an executive director who is or
has been a senior executive of a major financial institution,
brokerage firm, investment firm or similar institution, with
extensive experience in capital market development. The board
shall fix the executive director’s duties. The board shall fix the
compensation of the executive director and the compensation
shall, at least in part, be incentive based. The executive director
serves at the will and pleasure of the board.

(b) The board shall elect a secretary annually, who need not
be a member of the board, to keep a record of the proceedings
of the board.
The members and officers of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board.

The acts of the board are solely the acts of its corporation and are not those of an agent of the state. No debt or obligation of the board is a debt or obligation of the state.

Upon the affirmative vote of at least a majority of those members in attendance or participating by such other means as described in subsection (g), section four of this article in a meeting of the board, but in no event fewer than six of the members serving on the board, the board may approve any action to be taken and authorize the executive director for and on behalf of the board to execute and deliver all instruments, agreements or other documents that are required or are reasonably necessary to effectuate the decisions or acts of the board.

The West Virginia housing development fund shall provide office space and staff support services for the 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 activities of the board 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.

The board and the executive director shall involve students and faculty members of state institutions of higher education in the board’s activities in order to enhance the opportunities at the institutions for learning and for participation in the board’s investment activities and in the economic development of the state, whether in research, financial analysis, management participation or in such other ways as the
board and the executive director may, in their discretion, find appropriate.

§12-7-14. Exemption from certain requirements; audit.

In order to provide excellent investment opportunities and to effectively implement the new millennium fund, the investment activity and the new millennium fund activity provided by this article shall be exempt from the bidding and public sale requirements, from the approval of contractual agreements by the department of finance and administration or the attorney general and from the requirements of chapter five-a of this code. The transactions provided by this article shall be subject to an annual audit by an independent firm of certified public accountants.

CHAPTER 174

(Com. Sub. for S. B. 103 — By Senators Hunter, Kessler, Edgell, Bowman, Love, Rowe, Burnette, Redd, McKenzie, Bailey, Chafin, Craigo, Jackson, Plymale, Snyder, Prezioso, McCabe, Unger, Anderson, Helmick, Minard, Sharpe, Ross, Mitchell, Caldwell and Tomblin, Mr. President)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
tion for a legislative audit; providing civil penalties; and estab­
lishing effective dates for the article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. EMPLOYMENT OF RESIDENTS OF LABOR MARKET.

§21-1C-1. Short title.

§21-1C-2. Definitions.

§21-1C-3. Legislative findings; statement of policy.

§21-1C-4. Local labor market quota on public improvement construction projects;
waiver certificates.

§21-1C-5. Applicability and scope of article; reporting requirements.

§21-1C-6. Penalties for violation of article.

§21-1C-7. Effective date.

§21-1C-1. Short title.

This article shall be called the “West Virginia Jobs Act”.

§21-1C-2. Definitions.

As used in this article:

1. (1) The term “construction project” means any construc-
tion, reconstruction, improvement, enlargement, painting,
decorating or repair of any public improvement let to contract
in an amount equal to or greater than five hundred thousand
dollars. The term “construction project” does not include
temporary or emergency repairs;

2. (2)(A) The term “employee” means any person hired or
permitted to perform hourly work for wages by a person, firm
or corporation in the construction industry;
The term “employee” does not include:

(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;

(ii) Bona fide independent contractors; or

(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee’s work;

The term “employer” means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

The term “local labor market” means every county in West Virginia and all counties bordering West Virginia that fall within seventy-five miles of the border of West Virginia;

The term “public authority” means any officer, board, commission or agency of the state of West Virginia, excluding counties and municipalities. Further, the economic development authority, infrastructure and jobs development council and school building authority shall be required to comply with the provisions of this article for loans, grants or bonds provided for public improvement construction projects: Provided, That any project initiated by a county or local economic development authority and which is under the effective management of the county or local economic development authority shall not be included in this requirement;

The term “public improvement” includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.
§21-1C-3. Legislative findings; statement of policy.

The Legislature finds that the rate of unemployment in this state is significantly higher than that of most other states and that a majority of West Virginia counties are designated as labor surplus areas by the United States department of labor.

The Legislature finds that the employment of persons from outside the local labor market on public improvement construction projects contracted for and subsidized by the taxpayers of the state contributes significantly to the rate of unemployment and the low per capita income among qualified state residents who would otherwise be hired for these jobs.

Therefore, the Legislature declares that residents of local labor markets should be employed and given preference in hiring for the construction of public improvement projects which depend, in whole or in part, on state taxpayer funding.

§21-1C-4. Local labor market quota on public improvement construction projects; waiver certificates.

(a) Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project. Employees shall have resided in the local labor market for at least six months prior to their application for employment.

(b) Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs' division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.
(c) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

§21-1C-5. Applicability and scope of article; reporting requirements.

(a) This article applies to expenditures for construction projects by any public authority for public improvements as defined by this article.

(b) For public improvement projects let pursuant to this article, the public authority shall file with the division of labor copies of the waiver certificates and certified payrolls, pursuant to article five-a of this chapter, or other comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation.

(c) The division of labor shall compile the information required by this section and submit it to the joint committee on government and finance by the fifteenth day of October, two thousand two, for a legislative audit to be prepared for the December, two thousand two, interim session.

(d) Each public authority has the duty to implement the reporting requirements of this article. Every public improvement contract or subcontract let by a public authority shall contain provisions conforming to the requirements of this article.
(e) The division of labor is authorized to establish procedures for the efficient collection of data, collection of civil penalties prescribed in section six and transmittal of data to the joint committee on government and finance.

§21-1C-6. Penalties for violation of article.

Any employer who violates any provision of this article is subject to a civil penalty of one hundred dollars per day of violation.

§21-1C-7. Effective date.

This article is effective from the first day of September, two thousand one, through the fifteenth day of March, two thousand three.

CHAPTER 175

(H. B. 2331 — By Delegates Warner and Mezzatesta)

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

AN ACT to amend and reenact section three, article five-a, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the attachment of wage rates to construction contracts.

Be it enacted by the Legislature of West Virginia:

That section three, article five-a, 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 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS.

§21-5A-3. Fair minimum rate of wages; determination; filing; schedule of wages part of specifications.

Any public authority authorized to let to contract the construction of a public improvement, shall, before advertising for bids for the construction thereof, ascertain from the state commissioner of labor, the fair minimum rate of wages, including fair minimum overtime and holiday pay, to be paid by the successful bidder to the laborers, workmen or mechanics in the various branches or classes of the construction to be performed; and such schedule of wages shall be made a part of the specifications for the construction and shall be published in an electronic or other medium and incorporated in the bidding blanks by reference when approved by the commissioner of labor where the construction is to be performed by contract.

The "fair minimum rate of wages," for the intents and purposes of this article, shall be the rate of wages paid in the locality in this state as hereinbefore defined to the majority of workmen, laborers or mechanics in the same trade or occupation in the construction industry. The commissioner of labor or a member of his or her department designated by him or her shall assemble the data as to fair minimum wage rates and shall file wage rates. Rates shall be established and filed as hereinafter provided on the first day of January of each year. These rates shall prevail as the minimum wage rate on all public improvements on which bids are asked during the year beginning with the date when such new rates are filed and until the new rates are filed, the rates for the preceding year shall remain in effect: Provided, That such rates shall not remain in effect for a period longer than fifteen months from the date they are published, but, this provision shall not affect construction of a public improvement then underway.
AN ACT to amend and reenact section six, article five-e, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the effective date of gender-related employment provisions of said code.

Be it enacted by the Legislature of West Virginia:

That section six, article five-e, 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 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-6. Commission’s duties; promulgation of rules.

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

(1) An analysis of state job descriptions which measures the inherent skill, effort, responsibility and working conditions of various jobs and classifications; and
(2) A review of similar efforts to eliminate gender-based wage differentials implemented by other governmental entities in this and other states.

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

(c) Based upon the findings and recommendations in its report, the commission may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article.

(d) Notwithstanding any other provision of this article, if no legislative rules are approved for promulgation by the Legislature pursuant to this article prior to the first day of July, two thousand two, then the provisions of sections three and four of this article shall become effective on such date.

CHAPTER 177

(Com. Sub. for H. B. 2801 — By Delegates Tucker, Staton, Marshall, Varner, Caputo, Kuhn and Hubbard)

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

AN ACT to amend and reenact section fourteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the contractors' licensing board; providing for an additional cause for disciplinary
action; and removing obsolete language concerning disciplinary
hearing requirements provided by legislative rule.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eleven, 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 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


(a) The board has the power and authority to impose the
following disciplinary actions:

(1) Permanently revoke a license;

(2) Suspend a license for a specified period;

(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional
practice of a licensee;

(5) Impose requirements for remedial professional
education to correct deficiencies in the education, training and
skill of a licensee; and

(6) Impose a probationary period requiring a licensee to
report regularly to the board on matters related to the grounds
for probation; the board may withdraw probationary status if
the deficiencies that require the sanction are remedied.

(b) The board may summarily suspend a licensee pending
a hearing or pending an appeal after hearing upon a
determination that the licensee poses a clear, significant and
immediate danger to the public health and safety.
(c) The board may reinstate the suspended or revoked license of a person, if, upon a hearing, the board finds and determines that the person is able to practice with skill and safety.

(d) The board may accept the voluntary surrender of a license: Provided, That the license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within sixty days of the date the disciplinary action is taken. The board shall hear the appeal within thirty days from receipt of notice of appeal in accordance with the provisions of chapter twenty-nine-a of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal that action pursuant to the provisions of chapter twenty-nine-a of this code.

(g) The following are causes for disciplinary action:

(1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

(2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

(3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;
(4) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

(5) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with the person's operations as a contractor when the person has the capacity to pay or when the person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay or defraud the person to whom the debt is owed;

(6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license, or in connection with official licensing matters;

(7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;

(8) Willfully or deliberately acting in the capacity of a contractor when not licensed, or as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof;
(10) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;

(11) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed; or

(12) Knowingly employing a person or persons who do not have the legal right to be employed in the United States.

(h) In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action may be taken by the board except on the affirmative vote of at least six members thereof. Other than as specifically set out herein, the board has no power or authority to impose or assess damages.

(i) On or before the first day of January, two thousand one, the board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall specify a procedure for the investigation and resolution of all complaints against persons licensed under this chapter.
AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-e, all relating to authorizing the superintendent of state police to establish and operate a post exchange at the state police academy; establishing operation procedures; creating special account; limiting the use of proceeds; establishing reporting requirements; authorizing the proposal of rules; and providing for termination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. STATE POLICE ACADEMY POST EXCHANGE.

§15-2E-1. Definitions.
§15-2E-4. Creation of special account.
§15-2E-5. Use of funds from post exchange revenue.
§15-2E-6. Post exchange reporting requirements.
§15-2E-8. Termination date.

§15-2E-1. Definitions.

1 As used in this article:

2 (1) "Certain limited items" means personal grooming and hygiene products, food and beverages, convenience items, and items bearing the state police emblem or other insignia that are necessary for training purposes.

3 (2) "Post exchange" means a particular area located at the state police academy where certain limited items are offered for sale.
(3) "State police academy" means the law-enforcement training facility established pursuant to section three, article two of this chapter located at Institute, West Virginia, or an additional or successor location.

(4) "Superintendent" means the superintendent of state police as established in section two, article two of this chapter.

(5) "Training" means and includes instruction for members of the state police, county sheriffs and deputies, municipal police, law-enforcement officers employed by the division of natural resources, and other persons employed by state or local governmental units charged with enforcing state or local laws, regardless of the length of instruction.


Notwithstanding any other provision of this code to the contrary, the superintendent is authorized to establish and operate a post exchange at the state police academy.


(a) The state police post exchange may offer certain limited items for sale to persons attending training at the state police academy, to persons actively employed by the state police and to persons retired from employment with the state police.

(b) The post exchange may only be open at such times as may be established by the superintendent.

(c) The superintendent shall appoint state police employees to supervise the operation of the post exchange.

(d) The superintendent shall establish a system of bookkeeping, accounting and auditing procedures for the proper
11 handling of funds derived from the operation of the post exchange.

13 (e) The superintendent shall post a sign in the post exchange which states: “In accordance with the provisions of section seventeen, article two, chapter fifteen of the code, it is unlawful for every person who is not a member of the state police to wear or use the state police uniform, badge, emblem or other insignia. Any person, who is not a member of the state police, who wears or uses the state police uniform, badge, emblem or other insignia shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or jailed or both fined and jailed”.

§15-2E-4. Creation of special account.

1 All moneys collected from operation of the post exchange and any money collected from vending machine sales made pursuant to section three-d, article ten-g, chapter eighteen of this code, shall be deposited in a special account in the state treasury to be known as the “state police academy post exchange”. Expenditures from the fund must be for the purposes set forth in section five of this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of 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 appropriation by the Legislature.

§15-2E-5. Use of funds from post exchange revenue.

1 All proceeds derived from the operation of the post exchange and any money derived from the operation of vending machines, after the payment of operating expenses,
notwithstanding any provision of this code to the contrary, must be used exclusively for the publication of the cadet class yearbook and for repair and alteration of the state police academy.

§15-2E-6. Post exchange reporting requirements.

The superintendent shall complete and submit to the governor and the Legislature by the first day of each regular legislative session a report on the amount of funds derived from the operation of the post exchange during the previous fiscal year and how those funds were used.


The superintendent may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the establishment and operation of the post exchange.

§15-2E-8. Termination date.

The state police academy post exchange provided for in this article shall terminate pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand six, unless continued pursuant to the provisions of that article by legislation enacted prior to the termination date.

CHAPTER 179

(Com. Sub. for H. B. 2587 — By Mr. Speaker, Mr. Kiss, and Delegates Staton, Amores, Coleman, Warner, Douglas and Stemple)

[Passed April 3, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend article ten, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five; and to amend and reenact section six, article seven, chapter sixty-one of said code, all relating to permitting federal law-enforcement officers to assist state, county and municipal law-enforcement officers in enforcing state laws on request or if a felony is committed in the officer’s presence; and permitting federal law-enforcement officers to carry weapons off duty.

Be it enacted by the Legislature of West Virginia:

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

Chapter
15. Public Safety.
61. Crimes and Their Punishment.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-5. Federal officers’ peace-keeping authority.

(a) Notwithstanding any provision of this code to the contrary, any person who is employed by the United States government as a federal law-enforcement officer and is listed in subsection (b) of this section, has the same authority to enforce the laws of this state, except state or local traffic laws or parking ordinances, as that authority granted to state or local law-enforcement officers, if one or more of the following circumstances exist:
(1) The federal law-enforcement officer is requested to provide temporary assistance by the head of a state or local law-enforcement agency or the designee of the head of the agency and that request is within the state or local law-enforcement agency's scope of authority and jurisdiction and is in writing: Provided, That the request does not need to be in writing if an emergency situation exists involving the imminent risk of loss of life or serious bodily injury;

(2) The federal law-enforcement officer is requested by a state or local law-enforcement officer to provide the officer temporary assistance when the state or local law-enforcement officer is acting within the scope of the officer's authority and jurisdiction and where exigent circumstances exist; or

(3) A felony is committed in the federal law-enforcement officer's presence or under circumstances indicating a felony has just occurred.

(b) This section applies to the following persons who are employed as full-time federal law-enforcement officers by the United States government and who are authorized to carry firearms while performing their duties:

(1) Federal bureau of investigation special agents;

(2) Drug enforcement administration special agents;

(3) United States marshal's service marshals and deputy marshals;

(4) United States postal service inspectors;

(5) Internal revenue service special agents;

(6) United States secret service special agents;
(7) Bureau of alcohol, tobacco, and firearms special agents;

(8) Police officers employed pursuant to 40 U.S.C. §§318 and 490 at the federal bureau of investigation’s criminal justice information services division facility located within this state; and

(9) Law enforcement commissioned rangers of the national park service.

(c) Any person acting under the authority granted pursuant to this section:

(1) Has the same authority and is subject to the same exemptions and exceptions to this code as a state or local law-enforcement officer;

(2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

(3) May not initiate or conduct an independent investigation into an alleged violation of any provision of this code except to the extent necessary to preserve evidence or testimony at risk of loss immediately following an occurrence described in subdivision (3), subsection (a) of this section;

(4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims Act; and

(5) Has the same immunities from liability as a state or local law-enforcement officer.

(d) For purposes of this section, a state or local law-enforcement officer means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality
thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy regional recreation authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency.

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:

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

*Clerk’s Note: This section was also amended by S. B. 490 (Chapter 138), which passed subsequent to this act.
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 reciprocity agreements on behalf of the state of West Virginia with states or political subdivisions which have similar gun permitting laws and which recognize and honor West Virginia licenses issued pursuant to section four of this article;
(9) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty.

CHAPTER 180

(Com. Sub. for H. B. 2540 — By Delegates C. White, Yeager, Marshall, Perry, Caputo, Smirl and Azinger)

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

AN ACT to amend and reenact section five, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring an employer to provide certain notices and consequences to a newly hired law-enforcement officer; providing for consequences to an employer if an employer fails to provide certain notices and consequences to a newly hired law-enforcement officer; and providing for circumstances where a law-enforcement officer may appeal their termination to the governor's committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-5. Certification requirements.

(a) Except as provided in subsections (b) and (g) below, no person may be employed as a law-enforcement officer by any
West Virginia law-enforcement agency or by any state institution of higher education on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e) below, by the governor’s committee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The person’s employer shall provide notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty calendar days of that person’s commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant’s enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the governor’s committee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification, the governor’s committee shall forward to the applicant documentation of certification. An
applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, may not be certified by the governor's committee.

(c) Any person who is employed as a law-enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia state police cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the governor's committee requesting certification. The governor's committee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia state police cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the governor's committee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The governor's
committee shall review the application and, upon determining
that the applicant has met the requirements for certification,
shall forward to the applicant documentation of certification.

(e) Any person who begins employment on or after the
effective date of this article as a law-enforcement officer is
certifiable as having met the minimum entry level law-
enforcement training program requirements and is exempt from
attending a law-enforcement training academy if the person has
satisfactorily completed a course of instruction in law
enforcement equivalent to or exceeding the minimum
applicable law-enforcement training curricula promulgated by
the governor’s committee. To receive certification, the person
shall make written application within ninety calendar days
following the commencement of employment to the governor’s
committee requesting certification. The application shall
include a notarized statement of the applicant’s satisfactory
completion of the course of instruction in law enforcement, a
notarized transcript of the applicant’s relevant scholastic
records, and a notarized copy of the curriculum of the
completed course of instruction. The governor’s committee
shall review the application and, if it finds the applicant has met
the requirements for certification shall forward to the applicant
documentation of certification.

(f) Any person who is employed as a law-enforcement
officer on or after the effective date of this article and fails to be
certified shall be automatically terminated and no further
emoluments shall be paid to such officer by his or her
employer. Any person terminated shall be entitled to reapply,
as a private citizen, to the subcommittee for training and
certification, and upon being certified may again be employed
as a law-enforcement officer in this state: Provided, That if a
person is terminated under this subsection because an
application was not timely filed to the academy, and the
person’s employer failed to provide notice or disclosure to that
person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

(g) Nothing in this article may be construed as prohibiting any governing body, civil service commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the governor's committee.

(h) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding the effective date of this article for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such provisions be mandatory during the five years next succeeding the effective date of this article for law-enforcement officers of a law-enforcement agency which does not employ a civil service system for its law-enforcement personnel: Provided, That such requirements shall be mandatory for all such law-enforcement officers until their law-enforcement officials apply for their exemption by submitting a written plan to the governor's committee which will reasonably assure compliance of all law-enforcement officers of their agencies within the applicable two or five-year period of exemption.

(i) Any person aggrieved by a decision of the governor's committee made pursuant to this article may contest such decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.
138 (j) Any person terminated from employment for not filing
139 an application to the law-enforcement training academy within
140 ninety days after commencing employment as a law-
141 enforcement officer may appeal the termination to the
142 governor's committee for reconsideration on an individual
143 basis.

CHAPTER 181

(S. B. 730 — By Senators Wooton, Burnette, Deem,
Facemyer, Kessler, Ross, Rowe and Snyder)

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

AN ACT to amend and reenact section six hundred one, article
twenty-seven, chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to
requiring law-enforcement agencies to open an official
investigation when a person is reported missing who had earlier
been awarded a protective order or was otherwise protected by the
protective provisions of a domestic violence protective order or
where an affidavit is filed alleging domestic violence; requiring
law-enforcement agencies to open an official investigation when
a person submits an affidavit that a missing person had previously
been threatened or abused by another person; and providing for
a criminal penalty for submitting a false affidavit.

Be it enacted by the Legislature of West Virginia:

That section six hundred one, article twenty-seven, 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 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

*§48-27-601. Filing of orders with law-enforcement agency; affidavit 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 household, pursuant to an order entered pursuant to section 27-503 and shall be delivered to such law-enforcement agencies simultaneously with any order giving the party’s consent for a law-enforcement officer to enter the residence or household, without a warrant, to enforce the protective order or temporary order.

(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.

(d) Any law-enforcement agency in this state in possession of or with notice of the existence of an order issued pursuant to

*Clerk's Note: This section was also amended by H. B. 2199 (Chapter 91), which passed prior to this act.*
the provisions of sections 27-403 or 27-501 of this article or the
provisions of section 5-509 of this chapter which is in effect or
has been expired for thirty days or less that receives a report
that a person protected by such an order has been reported to be
missing shall immediately follow its procedures for
investigating missing persons. No agency or department policy
delaying the beginning of an investigation shall have any force
or effect.

(e) The provisions of subsection (d) of this section shall be
applied where a report of a missing person is made which is
accompanied by a sworn affidavit that the person alleged to be
missing was, at the time of his or her alleged disappearance,
being subjected to treatment which meets the definition of
domestic battery or assault set forth in section twenty-eight,
article two, chapter sixty-one of this code.

CHAPTER 182

(Com. Sub. for S. B. 298 — By Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]
legislative intent relating to promulgation or legislative rules; modifying method of disapproval of certain legislative rules; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing department of administration to promulgate a legislative rule relating to rules for selecting design-builders; authorizing department of administration and auditor to promulgate a legislative rule relating to state purchasing card program; authorizing consolidated public retirement board to promulgate a legislative rule relating to general provisions; authorizing consolidated public retirement board to promulgate a legislative rule relating to consolidated public retirement board benefit determination and appeal; authorizing consolidated public retirement board to promulgate a legislative rule relating to teachers’ defined contribution system; authorizing consolidated public retirement board to promulgate a legislative rule relating to teachers’ defined benefit plan; authorizing consolidated public retirement board to promulgate a legislative rule relating to public employees retirement system; and authorizing consolidated public retirement board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave.

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

Article

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

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

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

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

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

(a) The legislative rule filed in the state register on the twenty-third day of March, two thousand, authorized under the authority of section six, article twenty-two-a, chapter five of
this code, modified by the department of administration to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the twenty-fourth day of
May, two thousand, relating to the department of administration
(rules for selecting design-builders under the design build
procurement act, 148 CSR 11), is authorized with the following
amendment:

"On page seven, section eleven, after subsection 11.8 by
inserting '11.9. For the purpose of this section, “awarding
authority” means the entity having authority to issue and sign
the purchase order for the construction or lease-purchase of the
project.”"

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


(a) The legislative rule filed in the state register on the first
day of September, two thousand, under the authority of section
one, article ten-d, chapter five of this code, modified by the
consolidated public retirement board to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, two
thousand, relating to the consolidated public retirement board
(general provisions, 162 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the first
day of September, two thousand, authorized under the authority
of section one, article ten-d, chapter five of this code, modified
by the consolidated public retirement board to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the twenty-eighth day of
November, two thousand, relating to the consolidated public
retirement board (consolidated public retirement board benefit
determination and appeal, 162 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the first
day of September, two thousand, under the authority of section
one, article ten-d, chapter five of this code, modified by the
consolidated public retirement board to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, two
thousand, relating to the consolidated public retirement board
(teachers' defined contribution system, 162 CSR 3), is
authorized.

(d) The legislative rule filed in the state register on the first
day of September, two thousand, under the authority of section
one, article ten-d, chapter five of this code, modified by the
consolidated public retirement board to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the fourteenth day of December, two thousand,
relating to the consolidated public retirement board (teachers'
defined benefit plan, 162 CSR 4), is authorized.

(e) The legislative rule filed in the state register on the first
day of September, two thousand, under the authority of section
one, article ten-d, chapter five of this code, modified by the
consolidated public retirement board to meet the objections of
the legislative rule-making review committee and refiled in the
state register on the twenty-eighth day of November, two
thousand, relating to the consolidated public retirement board
(public employees retirement system, 162 CSR 5), is
authorized.
(f) The legislative rule filed in the state register on the first
day of September, two thousand, authorized under the authority
of section one, article ten-d, chapter five of this code, modified
by the consolidated public retirement board to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the fourteenth day of December,
two thousand, relating to the consolidated public retirement
board (service credit for accrued and unused sick and annual
leave, 162 CSR 8), is disapproved.

CHAPTER 183

(Com. Sub. for H. B. 2663 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)

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

AN ACT to amend and reenact article three, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, all relating generally to the promulgation of
administrative rules by the various executive or administrative
agencies and the procedures relating thereto; legislative mandate
or authorization for the promulgation of certain legislative rules
by various executive or administrative agencies of the state;
authorizing certain of the agencies to promulgate certain
legislative rules in the form that the rules were filed in the state
register; authorizing certain of the agencies to promulgate certain
legislative rules with various modifications presented to and
recommended by the legislative rule-making review committee;
authorizing certain of the agencies to promulgate certain
legislative rules as amended by the Legislature; authorizing
certain of the agencies to promulgate certain legislative rules with
various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from municipal solid waste landfills; to authorizing the division of environmental protection to promulgate a legislative rule relating to requirements for operating permits; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to oil and gas wells and other wells; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to underground storage tanks; authorizing the solid waste management board to promulgate a legislative rule relating to the developing, updating and amending of comprehensive litter and solid waste control plans; authorizing the solid waste management board to promulgate a legislative rule relating to the development of commercial and solid waste facility siting plans; authorizing the division of environmental protection to promulgate a legislative rule relating to the NOx budget trading program as a means of control and reduction of nitrogen oxides; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the combustion of refuse; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous
waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to the awarding of the West Virginia stream partners program grant; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining blasting; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to quarrying and reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to the certification of gas wells; authorizing the division of environmental protection to promulgate a legislative rule relating to yard waste composting; authorizing the division of environmental protection to promulgate a legislative rule relating to waste tire management; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

(f) The legislative rule filed in the state register on the twenty-third day of August, two thousand, authorized under the authority of section two, article six, chapter twenty-two, of this code, relating to the division of environmental protection (oil and gas wells and other wells, 35 CSR 4), is authorized.
(g) The legislative rule filed in the state register on the twenty-third day of August, two thousand, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, relating to the division of environmental protection (hazardous waste management, 33 CSR 20), is authorized.

(h) The legislative rule filed in the state register on the twenty-third day of August, two thousand, authorized under the authority of section six, article eighteen, chapter twenty-two, of this code, relating to the division of environmental protection (underground storage tanks, 33 CSR 30), is authorized.

(i) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section four, article five, chapter twenty-two, of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of December, two thousand, relating to the division of environmental protection (NOx budget trading program as a means of control and reduction of nitrogen oxides, 45 CSR 1), is authorized.

(j) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, two thousand one, relating to the division of environmental protection (to prevent and control air pollution from combustion of refuse, 45 CSR 6), is authorized.

(k) The legislative rule filed in the state register on the thirty-first day of August two thousand, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (air pollution from combustion of refuse, 45 CSR 6), is authorized.
code, modified by the division of environmental protection to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the fourteenth day
of December, two thousand, relating to the division of
environmental protection (to prevent and control air pollution
from hazardous waste treatment, storage or disposal facilities,
45 CSR 25), is authorized.

(l) The legislative rule filed in the state register on the
fourth day of May, two thousand, authorized under the authority
of section four, article thirteen, chapter twenty, of this code,
modified by the division of environmental protection to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the twentieth day of July, two
thousand, relating to the division of environmental protection
(awarding of the West Virginia stream partners program grant,
60 CSR 4), is authorized.

(m) The legislative rule filed in the state register on the
twenty-ninth day of August, two thousand, authorized under the
authority of section three, article three-a, chapter twenty-two of
this code, modified by the division of environmental protection
to meet the objections of the legislative rule-making review
committee and refiled in the state register on the twentieth day
of February, two thousand one, relating to the division of
environmental protection (surface mining blasting, 199 CSR 1),
is authorized with the following amendments:

On page 2, subsection 2.8, after the word “outermost” by
inserting the word “loaded”;

On page 6, subdivision 3.2.c, by striking out the proposed
sentence at the end of the paragraph and inserting in lieu thereof
a new sentence to read as follows: For all surface coal
extraction operations that will include production blasting, the
monitoring procedure shall include provisions for monitoring
ground vibrations and air blast.

On pages 8 and 9, subdivision 3.6.a, by striking out the
fourth and fifth sentences in their entirety;

On page 11, subdivision 3.6.i, by inserting the words “A
copy of” at the beginning of the last sentence of the
subdivision;

On page 13, subdivision 3.8.a, at the end of subdivision, by
changing the period to a colon and adding a proviso to read as
follows: Provided, That once all required preblast surveys have
been accepted by the Office of Explosives and Blasting,
blasting may commence sooner than 15 days of submittal;

On page 14, subdivision 3.10.a, by striking out the
subdivision in its entirety and inserting in lieu thereof a new
subdivision 3.10.a to read as follows: The office shall review
each preblast survey as to form and completeness only, and
notify the operator of any deficiencies. The operator or his
designee shall correct deficiencies within 30 days from receipt
of notice of deficiencies;

On page 15, subsection 4.1.a., following the words ‘sign the
blasting log.’ by inserting the following sentence: ‘Nothing in
this rule modifies statutory regulatory authority of the state fire
marshal and the state fire commission to regulate blasting and
explosives.;

And,

On page 25, subsection 6.1 by striking out the words “West
Virginia Mining and Reclamation Association” and by inserting
the word “Inc.” after the words “West Virginia Coal
Association.”
(n) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section four, article three, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, two thousand, relating to the division of environmental protection (surface mining and reclamation rule, 38 CSR 2), is authorized.

On page 34 of the rule, subdivision 3.22.e, by striking out the last sentence and inserting in lieu thereof the following: Material damage to the hydrologic balance outside the permit areas means any long term or permanent change in the hydrologic balance caused by surface mining operations which has a significant adverse impact on the capability of the affected water resources to support existing conditions and uses.;

On page 104 of the rule, paragraph 11.3.a.3, after the word “surety” by inserting the words “received after July 1, 2001”;

On page 135 of the rule, subdivision 12.2.e. after the word “standards” by striking out the words “Measures taken during mining to prevent the formation of waters not in compliance with effluent limitations or water quality standards shall not be considered passive treatment” and inserting in lieu thereof the following: “Measures approved in the permit and taken during mining and reclamation to prevent the formation of acid drainage shall not be considered passive treatment:”;

On page 206 of the rule, subsection 24.4 at the end of the subsection, after the word “rule”, by inserting the words “Provided, That there is no evidence of a premature vegetation release.”
(o) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section four, article four, chapter twenty-two, of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of February, two thousand one, relating to the division of environmental protection (quarrying and reclamation, 38 CSR 3), is authorized with the following amendments:

"On page 22 of the rule, subsection 8.5., by striking all the language in subsection 8.5 and replacing it with the following language: ‘Backfilling. - - All available spoil material shall be used as necessary to backfill pit areas, to provide positive drainage and to achieve the reclamation as provided for in the approved reclamation plan. Excess spoil shall be placed in controlled fills or spoil piles in accordance with section 9 of this rule. Spoil material that is approved to be placed in permanent excess spoil disposal areas is not required to used as backfill.’

And,

On page 35 of the rule, subsection 9.4.c.4, following the words 'professional engineer' inserting the following sentence ‘The spoil pile shall be considered dormant and shall not need to be certified during periods of inactivity that exceed ninety (90) days in length.’"

(p) The legislative rule filed in the state register on the twenty-third day of August, two thousand, authorized under the authority of section two, article six, chapter twenty-two, of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, two thousand, relating to the division of
environmental protection (certification of gas wells, 35 CSR 7),
is authorized.

(q) The legislative rule filed in the state register on the
thirty-first day of August, two thousand, authorized under the
authority of section eight, article eleven, chapter twenty, of this
code, modified by the division of environmental protection to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-third
day of February, two thousand one, relating to the division of
environmental protection (yard waste composting, 33 CSR 3),
is authorized.

(r) The legislative rule filed in the state register on the
thirty-first day of August, two thousand, authorized under the
authority of section five, article fifteen, chapter twenty-two, of
this code, modified by the division of environmental protection
to meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifteenth day
of December, two thousand, relating to the division of
environmental protection (waste tire management, 33 CSR 5),
is authorized.

§64-3-2. Environmental quality board.

On page one by striking out the entire rule and inserting in
lieu thereof the following:

§46-1-1. General.
These rules establish requirements governing the discharge or deposit of sewage, industrial wastes and other wastes into the waters of the state and establish water quality standards for the waters of the State standing or flowing over the surface of the State. It is declared to be the public policy of the State of West Virginia to maintain reasonable standards of purity and quality of the water of the State consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, and other aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development. (See W. Va. Code §22-11-2.)

Authority. — W. Va. Code §22B-3-4

Filing Date. —

Effective Date. —

§46-1-2. Definitions.

The following definitions in addition to those set forth in W. Va. Code §22-11-3, shall apply to these rules unless otherwise specified herein, or unless the context in which used clearly requires a different meaning:

2.1. "Ambient Concentration" is that measured value or level of water quality downstream of the proposed or existing activity (discharge point for point source, runoff area for nonpoint source) for any parameter of concern determined through EPA-approved, collection and analytical methods in 40 CFR 136 or other methods accepted by the Chief.

2.2. "Ambient Water Quality Conditions" (AWQC) are those physical, chemical, biological and radiological conditions of the receiving waters of the state existing at the time of review of a regulated activity.

2.3. "Baseline Water Quality" is that ambient concentration established at the time of an initial antidegradation review under rules effective (date) for a stream or stream segment or any other water(s) of the state.
2.4. "Board" is the Environmental Quality Board.

2.5. "Chief" is the Chief of the Office of Water Resources of the West Virginia Division of Environmental Protection.

2.6. "Conventional treatment" is the treatment of water as approved by the West Virginia Bureau for Public Health to assure that the water is safe for human consumption.

2.7. "Cumulative" means a pollutant which increases in concentration in an organism by successive additions at different times or in different ways (bio-accumulation).

2.8. "Designated uses" are those uses specified in water quality standards for each water body or segment whether or not they are being attained. (See sections 6.2 - 6.6, herein)

2.9. "Director" is the Director of the West Virginia Division of Environmental Protection.

2.10. "Dissolved metal" is operationally defined as that portion of metal which passes through a 0.45 micron filter.

2.11. "Existing uses" are those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

2.12. The "Federal Act" means the Clean Water Act (also known as the Federal Water Pollution Control Act) 33 U.S.C. § 1251 - 1387.

2.13. "High quality waters" are those waters whose quality is equal to or better than the minimum levels necessary to achieve the national water quality goal uses.

2.14. "Intermittent streams" are streams which have no flow during sustained periods of no precipitation and which do not support aquatic life whose life history requires residence in flowing waters for a continuous period of at least six (6) months.

2.15. "Outstanding national resource waters" are those waters whose unique character, ecological or recreational value or pristine nature constitutes a valuable national or State resource.
2.16. "Natural" or "naturally occurring" values or "natural temperature" shall mean for all of the waters of the state:

2.16.a. Those water quality values which exist unaffected by — or unaffected as a consequence of — any water use by any person; and

2.16.b. Those water quality values which exist unaffected by the discharge, or direct or indirect deposit of, any solid, liquid or gaseous substance from any point source or non-point source.

2.17. "Non-point source" shall mean any source other than a point source from which pollutants may reach the waters of the state.

2.18. "Parameter of concern" means any parameter for which numeric water quality criteria have been adopted in 46 CSR 1 and any other parameter for which numeric criteria are not established but where the discharge of such parameter has a reasonable potential to either cause or contribute to a violation of the narrative criteria outlined under 46 CSR 1, section 3.

2.19. "Persistent" shall mean a pollutant and its transformation products which under natural conditions degrade slowly in an aquatic environment.

2.20. "Point source" shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

2.21. "Reasonable less-degrading or non-degrading alternatives" shall be identified based on case specific information (as outlined in section 4C.4.a. of Appendix F, herein). Generally speaking, less-degrading or non-degrading pollution control alternatives shall be considered reasonable where the costs of such alternatives are less than 110% of the costs of the pollution control measures associated with the proposed activity.

2.22. "Regulated activity" includes 1) any activity that requires a permit or a water quality certification pursuant to state or
federal law (e.g., Clean Water Act §402 NPDES permits, Clean Water Act §404 dredge and fill permits, or any activity requiring a Clean Water Act §401 certification), 2) any activity subject to nonpoint source control requirements or regulations, and 3) any activity which is otherwise subject to state requirements and regulations developed to protect water quality. The term “proposed activity” means a proposed activity that is also a regulated activity.

2.23. “Representative important species of aquatic life” shall mean those species of aquatic life whose protection and propagation will assure the sustained presence of a balanced aquatic community. Such species are representative in the sense that maintenance of water quality criteria will assure both the natural completion of the species’ life cycles and the overall protection and sustained propagation of the balanced aquatic community.

2.24. The “State Act” or “State Law” shall mean the West Virginia Water Pollution Control Act, W. Va. Code §22-11-1.


2.26. “Trading” means establishing upstream controls for a parameter of concern to compensate for new or increased downstream sources for the same parameter resulting in improved water quality for the parameter traded. More than one parameter of concern may be traded on a given stream. Trading may involve point sources, nonpoint sources or a combination of point and nonpoint sources. Unused permitted capacity cannot be traded.

2.27. “Trading Assessment Procedure” means methodologies to be used by the Director to document the basis for any trade allowed in sections 4B, 4C and 4D of Appendix F, herein, are EPA’s Total Maximum Daily Load Procedures (40 CFR 130.2(i)), wasteload allocation procedures outlined in EPA’s Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991), wasteload allocation methodologies outlined in EPA’s Draft Framework for Watershed-Based Trading (EPA/800-R-96-001, May 1996) or other EPA approved wasteload allocation methodologies as long as these
methodologies are consistent with the trading provisions of this rule.

2.28. "Trout waters" are streams or stream segments which sustain year-round trout populations. Excluded are those streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.

2.29. "Water of special concern" are those waters occurring in the categories outlined in section 4.1.c. of the antidegradation policy. This designation provides an intermediate level of antidegradation protection between high quality waters and outstanding national resource waters.

2.30. "Water quality criteria" shall mean levels of parameters or stream conditions that are required to be maintained by these regulations. Criteria may be expressed as a constituent concentration, levels, or narrative statement, representing a quality of water that supports a designated use or uses.

2.31. "Water quality standards" means the combination of water uses to be protected and the water quality criteria to be maintained by these rules.

2.32. "Wetlands" are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

2.33. "Wet weather streams" are streams that flow only in direct response to precipitation or whose channels are at all times above the water table.

§46-1-3. Conditions Not Allowable In State Waters.

3.1. Certain characteristics of sewage, industrial wastes and other wastes cause pollution and are objectionable in all waters of the state. Therefore, the Environmental Quality Board does hereby proclaim that the following general conditions are not to be allowed in any of the waters of the state.
3.2. No sewage, industrial wastes or other wastes present in any of the waters of the state shall cause therein or materially contribute to any of the following conditions thereof:

3.2.a. Distinctly visible floating or settleable solids, suspended solids, scum, foam or oily slicks;

3.2.b. Deposits or sludge banks on the bottom;

3.2.c. Odors in the vicinity of the waters;

3.2.d. Taste or odor that would adversely affect the designated uses of the affected waters;

3.2.e. Materials in concentrations which are harmful, hazardous or toxic to man, animal or aquatic life;

3.2.f. Distinctly visible color;

3.2.g. Concentrations of bacteria which may impair or interfere with the designated uses of the affected waters;

3.2.h. Requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as commonly employed; and

3.2.i. Any other condition, including radiological exposure, which adversely alters the integrity of the waters of the State including wetlands; no significant adverse impact to the chemical, physical, hydrologic, or biological components of aquatic ecosystems shall be allowed.

§46-1-4. Antidegradation Policy.

4.1. It is the policy of the State of West Virginia that the waters of the state shall be maintained and protected as follows:

4.1.a. Tier 1 Protection. Existing water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included as designated uses within these water quality standards.
4.1.b. Tier 2 Protection. The existing high quality waters of the state must be maintained at their existing high quality unless it is determined after satisfaction of the intergovernmental coordination of the state’s continuing planning process and opportunity for public comment and hearing that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. If limited degradation is allowed, it shall not result in injury or interference with existing stream water uses or in violation of state or federal water quality criteria that describe the base levels necessary to sustain the national water quality goal uses of protection and propagation of fish, shellfish and wildlife and recreating in and on the water.

In addition, the Board and the Director shall assure that all new and existing point sources shall achieve the highest established statutory and regulatory requirements applicable to them and shall assure the achievement of cost-effective and reasonable best management practices (BMPs) for non-point source control. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Director may require that more appropriate BMPs be developed and applied.

4.1.b.1. High quality waters are those waters meeting the definition at section 2.13 herein and section 4E.1. of Appendix F, herein.

4.1.b.2. High quality waters may include but are not limited to the following:

4.1.b.2.A. Streams designated by the West Virginia Legislature under the West Virginia Natural Stream Preservation Act, pursuant to W. Va. Code §22-13-5; and

4.1.b.2.B. Streams listed in West Virginia High Quality Streams, Fifth Edition, prepared by the Wildlife Resources Division, Department of Natural Resources (1986).

4.1.b.2.C. Streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.
4.1.c. Tier 2.5 Protection. Waters of special concern include all of those waters listed in Appendix F-2 herein. Waters of special concern may include, but are not limited to naturally reproducing trout streams, federally designated rivers under the “Wild and Scenic Rivers Act,” 16 U. S.C. §§ 1271 et seq., waters in state parks and forests, waters in National parks and forests, waters designated under the “National Parks and Recreation Act of 1978,” and waters with unique or exceptional aesthetic, ecological, or recreational value. Waters may be nominated for inclusion in this category by any interested party or by the Board on its own initiative.

4.1.d. Tier 3 Protection. In all cases, waters which constitute an outstanding national resource shall be maintained and protected and improved where necessary. Outstanding national resource waters include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §1131 et seq.) within the State.

Additional waters may be nominated for inclusion in that category by any interested party or by the Board on its own initiative. To designate a nominated water as an outstanding national resource water, the Board shall follow the public notice and hearing provisions as provided in 46 C.S.R. 6.

4.1.e. All applicable requirements of section 316(a) of the Federal Act shall apply to modifications of the temperature water quality criteria provided for in these rules.

§46-1-5. Mixing Zones.

5.1. In the permit review and planning process or upon the request of a permit applicant or permittee, the Chief may establish on a case-by-case basis an appropriate mixing zone.

5.2. The following guidelines and conditions are applicable to all mixing zones:

5.2.a. The Chief will assign, on a case-by-case basis, definable geometric limits for mixing zones for a discharge or a pollutant or pollutants within a discharge. Applicable limits shall
include, but may not be limited to, the linear distances from the point of discharge, surface area involvement, volume of receiving water, and shall take into account other nearby mixing zones. Mixing zones shall take into account the mixing conditions in the receiving stream (i.e: whether complete or incomplete mixing conditions exist). Mixing zones will not be allowed until applicable limits are assigned by the Chief in accordance with this section.

5.2.b. Concentrations of pollutants which exceed the acute criteria for protection of aquatic life set forth in Appendix E, Table 1 shall not exist at any point within an assigned mixing zone or in the discharge itself unless a zone of initial dilution is assigned. A zone of initial dilution may be assigned on a case-by-case basis at the discretion of the Chief. The zone of initial dilution is the area within the mixing zone where initial dilution of the effluent with the receiving water occurs, and where the concentration of the effluent will be its greatest in the water column. Where a zone of initial dilution is assigned by the Chief, the size of the zone shall be determined using one of the four alternatives outlined in section 4.3.3 of US EPA’s Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001 PB91-127415, March 1991). Concentrations of pollutants shall not exceed the acute criteria at the edge of the assigned zone of initial dilution. Chronic criteria for the protection of aquatic life may be exceeded within the mixing zone but shall be met at the edge of the assigned mixing zone.

5.2.c. Concentrations of pollutants which exceed the criteria for the protection of human health set forth in Appendix E, Table 1 shall not be allowed at any point unless a mixing zone has been assigned by the Chief after consultation with the Commissioner of the West Virginia Bureau for Public Health. Human health criteria may be exceeded within an assigned mixing zone, but shall be met at the edge of the assigned mixing zone. Mixing zones for human health criteria shall be sized to prevent significant human health risks and shall be developed using reasonable assumptions about exposure pathways. In assessing the potential human health risks of establishing a mixing zone upstream from a drinking water intake, the Chief shall consider the cumulative effects of multiple discharges and mixing zones on the drinking water intake. No mixing zone for human health criteria shall be established on a stream which has a seven (7) day, ten (10) year return frequency of 5 cfs or less.
5.2.d. Mixing zones, including zones of initial dilution, shall not interfere with fish spawning or nursery areas or fish migration routes; shall not overlap public water supply intakes or bathing areas; cause lethality to or preclude the free passage of fish or other aquatic life; nor harm any threatened or endangered species, as listed in the Federal Endangered Species Act, 15 U.S.C. §1531 et seq.

5.2.e. The mixing zone shall not exceed one-third (1/3) of the width of the receiving stream, and in no case shall the mixing zone exceed one-half (2) of the cross-sectional area of the receiving stream.

5.2.f. In lakes and other surface impoundments, the volume of a mixing zone shall not affect in excess of ten (10) percent of the volume of that portion of the receiving waters available for mixing.

5.2.g. A mixing zone shall be limited to an area or volume which will not adversely alter the existing or designated uses of the receiving water, nor be so large as to adversely affect the integrity of the water body.

5.2.h. Mixing zones shall not:

5.2.h.1. Be used for, or considered as, a substitute for technology-based requirements of the Act and other applicable state and federal laws.

5.2.h.2. Extend downstream at any time a distance more than five times the width of the receiving watercourse at the point of discharge.

5.2.h.3. Cause or contribute to any of the conditions prohibited in section 3, herein.

5.2.h.4. Be granted where instream waste concentration of a discharge is greater than 80%.

5.2.h.5. Overlap one another.

5.2.h.6. Overlap any 2 mile zone described in section 7.2.a.2 herein.
5.2.i. In the case of thermal discharges, a successful demonstration conducted under section 316(a) of the Act shall constitute compliance with all provisions of this section.

5.2.j. The Chief may waive the requirements of subsections 5.2.e and 5.2.h.2 above if a discharger provides an acceptable demonstration of:

5.2.j.1. Information defining the actual boundaries of the mixing zone in question; and

5.2.j.2. Information and data proving no violation of subsections 5.2.d and 5.2.g above by the mixing zone in question.

5.2.k. Upon implementation of a mixing zone in a permit, the permittee shall provide documentation that demonstrates to the satisfaction of the Chief that the mixing zone is in compliance with the provisions outlined in subsections 5.2.b, 5.2.c, 5.2.e, and 5.2.h.2, herein.

5.2.l. In order to facilitate a determination or assessment of a mixing zone pursuant to this section, the Chief may require a permit applicant or permittee to submit such information as deemed necessary.


6.1. These rules establish general Water Use Categories and Water Quality Standards for the waters of the State. Unless otherwise designated by these rules, at a minimum all waters of the State are designated for the Propagation and Maintenance of Fish and Other Aquatic Life (Category B) and for Water Contact Recreation (Category C) consistent with Federal Act goals. Incidental utilization for whatever purpose may or may not constitute a justification for assignment of a water use category to a particular stream segment.

6.1.a. Waste assimilation and transport are not recognized as designated uses. The classification of the waters must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial and other purposes including navigation.
Subcategories of a use may be adopted and appropriate criteria set to reflect varying needs of such subcategories of uses, for example to differentiate between trout water and other waters.

6.1.b. At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under section 301(b) and section 306 of the Federal Act and use of cost-effective and reasonable best management practices for non-point source control. Seasonal uses may be adopted as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria will be adjusted to reflect the seasonal uses; however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season. A designated use which is not an existing use may be removed, or subcategories of a use may be established if it can be demonstrated that attaining the designated use is not feasible because:

6.1.b.1. Application of effluent limitations for existing sources more stringent than those required pursuant to section 301(b) and section 306 of the Federal Act in order to attain the existing designated use would result in substantial and widespread adverse economic and social impact; or

6.1.b.2. Naturally-occurring pollutant concentrations prevent the attainment of the use; or

6.1.b.3. Natural, ephemeral, intermittent or low flow conditions of water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met; or

6.1.b.4. Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

6.1.b.5. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
6.1.b.6. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

6.1.c. The State shall take into consideration the quality of downstream waters and shall assure that its water quality standards provide for the attainment of the water quality standards of downstream waters.

6.1.d. In establishing a less restrictive use or uses, or subcategory of use or uses, and the water quality criteria based upon such uses, the Board shall follow the requirements for revision of water quality standards as required by W. Va. Code §22B-3-4 and section 303 of the Federal Act and the regulations thereunder. Any revision of water quality standards shall be made with the concurrence of EPA. The Board’s administrative procedural regulations for applying for less restrictive uses or criteria shall be followed.

6.2. Category A — Water Supply, Public. — This category is used to describe waters which, after conventional treatment, are used for human consumption. This category includes streams on which the following are located:

6.2.a. All community domestic water supply systems;

6.2.b. All non-community domestic water supply systems, (i.e. hospitals, schools, etc.);

6.2.c. All private domestic water systems;

6.2.d. All other surface water intakes where the water is used for human consumption. (See Appendix B for partial listing of Category A waters; see section 7.2.a.2, herein for additional requirements for Category A waters.) The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source.

6.3. Category B — Propagation and maintenance of fish and other aquatic life. —
This category includes:

6.3.a. Category B1 — Warm water fishery streams. — Streams or stream segments which contain populations composed of all warm water aquatic life.

6.3.b. Category B2 — Trout Waters. — As defined in section 2.28, herein (See Appendix A for a representative list.)

6.3.c. Category B4 — Wetlands. — As defined in section 2.32, herein; certain numeric stream criteria may not be appropriate for application to wetlands (see Appendix E, Table 1).

6.4. Category C — Water contact recreation. — This category includes swimming, fishing, water skiing and certain types of pleasure boating such as sailing in very small craft and outboard motor boats. (See Appendix D for a representative list of category C waters.)

6.5. Category D — Agriculture and wildlife uses.

6.5.a. Category D1 — Irrigation. — This category includes all stream segments used for irrigation.

6.5.b. Category D2 — Livestock watering. — This category includes all stream segments used for livestock watering.

6.5.c. Category D3 — Wildlife. — This category includes all stream segments and wetlands used by wildlife.

6.6. Category E — Water supply industrial, water transport, cooling and power. — This category includes cooling water, industrial water supply, power production, commercial and pleasure vessel activity, except those small craft included in Category C.

6.6.a. Category E1 — Water Transport. — This category includes all stream segments modified for water transport and having permanently maintained navigation aides.

6.6.b. Category E2 — Cooling Water. — This category includes all stream segments having one (1) or more users for industrial cooling.
6.6.c. Category E3 — Power production. — This category includes all stream segments extending from a point 500 feet upstream from the intake to a point one half (2) mile below the wastewater discharge point. (See Appendix C for representative list.)

6.6.d. Category E4 — Industrial. — This category is used to describe all stream segments with one (1) or more industrial users. It does not include water for cooling.

§46-1-7. West Virginia Waters.

7.1. Major River Basins and their Alphanumeric System. All streams and their tributaries in West Virginia shall be individually identified using an alphanumeric system as identified in the “Key to West Virginia Stream Systems and Major Tributaries” (1956) as published by the Conservation Commission of West Virginia and revised by the West Virginia Department of Natural Resources, Division of Wildlife (1985).

7.1.a. J - James River Basin. All tributaries to the West Virginia - Virginia State line.

7.1.b. P - Potomac River Basin. All tributaries of the main stem of the Potomac River to the West Virginia - Maryland - Virginia State line to the confluence of the North Branch and the South Branch of the Potomac River and all tributaries arising in West Virginia excluding the major tributaries hereinafter designated:

7.1.b.1. S - Shenandoah River and all its tributaries arising in West Virginia to the West Virginia - Virginia State line.

7.1.b.2. PC - Cacapon River and all its tributaries.

7.1.b.3. PSB - South Branch and all its tributaries.

7.1.b.4. PNB - North Branch and all tributaries to the North Branch arising in West Virginia.
Monongahela River Basin main stem and all its tributaries excluding the following major tributaries which are designated as follows:

7.1.c.1. MC - Cheat River and all its tributaries except those listed below:
7.1.c.1.A. MCB - Blackwater River and all its tributaries.
7.1.c.2. MW - West Fork River and all its tributaries.
7.1.c.3. MT - Tygart River and all its tributaries except those listed below:
7.1.c.3.A. MTB - Buckhannon River and all its tributaries.
7.1.c.3.B. MTM - Middle Fork River and all its tributaries.
7.1.c.4. MY - Youghigheny River and all its tributaries to the West Virginia - Maryland State line.

7.1.d. O Zone 1 - Ohio River - Main Stem. The main stem of the Ohio River from the Ohio - Pennsylvania - West Virginia state line to the Ohio - Kentucky - West Virginia State line.

7.1.e. O Zone 2 - Ohio River - Tributaries. All tributaries of the Ohio River excluding the following major tributaries:
7.1.e.1. LK - Little Kanawha River. The Little Kanawha River and all its tributaries excluding the following major tributary which is designated as follows:
7.1.e.1.A. LKH - Hughes River and all its tributaries.
7.1.e.2. K - Kanawha River Zone 1. The main stem of the Kanawha River from mile point 0, at its con-
fluence with the Ohio River, to mile point 72 near Diamond, West Virginia.

7.1.e.3. K - Kanawha River Zone 2.

The main stem of the Kanawha River from mile point 72 near Diamond, West Virginia and all its tributaries from mile point 0 to the headwaters excluding the following major tributaries which are designated as follows:

7.1.e.3.A. KP - Pocatalico River and all its tributaries.

7.1.e.3.B. KC - Coal River and all its tributaries.

7.1.e.3.C. KE - Elk River and all its tributaries.

7.1.e.3.D. KG - Gauley River.
The Gauley River and all its tributaries excluding the following major tributaries which are designated as follows:

7.1.e.3.D.1. KG-19 - Meadow River and all its tributaries.

7.1.e.3.D.2. KG-34 - Cherry River and all its tributaries.

7.1.e.3.D.3. KGC - Cranberry River and all its tributaries.

7.1.e.3.D.4. KGW - Williams River and all its tributaries.

7.1.e.3.E. KN - New River.
The New River from its confluence with the Gauley River to the Virginia - West Virginia State line and all tributaries excluding the following major tributaries which are designated as follows:

7.1.e.3.E.1. KNG - Greenbrier River and all its tributaries.

7.1.e.3.E.2. KNB - Bluestone River and all its tributaries.
East River and all its tributaries.

(1) - Bluestone Lake.

Guyandotte River and all its tributaries excluding the following major tributary which is designated as follows:

OGM - Mud River and all its tributaries.

Big Sandy River to the Kentucky - Virginia - West Virginia State lines and all its tributaries arising in West Virginia excluding the following major tributary which is designated as follows:

Fork and all its tributaries.

Applicability of Water Quality Standards. The following shall apply at all times unless a specific exception is granted in this section:

Water Use Categories as described in section 6, herein.

Based on meeting those Section definitions, tributaries or stream segments may be classified for one or more Water Use Categories. When more than one use exists, they shall be protected by criteria for the use category requiring the most stringent protection.

Each segment extending upstream from the intake of a water supply public (Water Use Category A), for a distance of one half (2) mile or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in section 8, herein. In addition, within that one half (2) mile zone, the Chief may establish for any discharge, effluent limitations for the protection of human health that require additional removal of...
pollutants than would otherwise be provided by this rule. (If a watershed is not significantly larger than this zone above the intake, the water supply section may include the entire upstream watershed to its headwaters.) Until June 30, 2003, the one-half mile zone described in this section shall not apply to the Ohio River main channel (between Brown's Island and the left descending bank) between river mile points 61.0 and 63.5.

7.2.b. In the absence of any special application or contrary provision, water quality standards shall apply at all times when flows are equal to or greater than the minimum mean seven (7) consecutive day drought flow with a ten (10) year return frequency (7Q10). NOTE: With the exception of section 7.2.c.5 listed herein exceptions do not apply to trout waters nor to the requirements of section 3, herein.

7.2.c. Exceptions: Numeric water quality standards shall not apply: (See section 7.2.d, herein, for site-specific revisions)

7.2.c.1. When the flow is less than 7Q10;

7.2.c.2. In wet weather streams (or intermittent streams, when they are dry or have no measurable flow): Provided, That the existing and designated uses of downstream waters are not adversely affected;

7.2.c.3. In any assigned zone of initial dilution of any mixing zone where a zone of initial dilution is required by section 5.2.b herein, or in any assigned mixing zone for human health criteria or aquatic life criteria for which a zone of initial dilution is not assigned; In zones of initial dilution and certain mixing zones: Provided, That all requirements described in section 5 herein shall apply to all zones of initial dilution and all mixing zones;

7.2.c.4. Where, on the basis of natural conditions, the Board has established a site-specific aquatic life water quality criterion that modifies a water quality criterion set out in Appendix E, Table 1 of this rule. Where a natural condition of a waterbody is demonstrated to be of lower quality than a water quality criterion for the use classes and subclasses in section 6 of this rule, the Board, in its discretion, may establish a site-specific water
quality criterion for aquatic life. This alternate criterion may only
serve as the chronic criterion established for that parameter. This
alternate criterion must be met at end of pipe. Where the Board
decides to establish a site-specific water quality criterion for aquatic
life, the natural condition constitutes the applicable water quality
criterion. A site-specific criterion for natural conditions may only.
be established through the legislative rulemaking process in accor-
dance with W.Va. Code §29A-3-1 et seq. and must satisfy the pub-
lic participation requirements set forth at 40 C.F.R. 131.20 and 40
C.F.R. Part 25. Site-specific criteria for natural conditions may be
established only for aquatic life criteria. A public notice, hearing
and comment period is required before site-specific criteria for nat-
ural conditions are established.

Upon application or on its own initiative, the Board will
determine whether a natural condition of a waterbody should be
approved as a site-specific water quality criterion. Before it ap-
proves a site-specific water quality criterion for a natural condition,
the Board must find that the natural condition will fully protect
existing and designated uses and ensure the protection of aquatic
life. If a natural condition of a waterbody varies with time, the
natural condition will be determined to be the actual natural condi-
tion of the waterbody measured prior to or concurrent with dis-
charge or operation. The Board will, in its discretion, determine a
natural condition for one or more seasonal or shorter periods to
reflect variable ambient conditions; and require additional or con-
tinuing monitoring of natural conditions.

An application for a site-specific criterion to be established
on the basis of natural conditions shall be filed with the Board and
shall include the following information:

7.2.c.4.A. A U.S.G.S. 7.5 minute map showing the stream segment affected and showing all exist-
ing discharge points and proposed discharge point;

7.2.c.4.B. The alphanumeric
code of the affected stream, if known;

7.2.c.4.C. Water quality data for
the stream or stream segment. Where adequate data are unavail-
able, additional studies may be required by the Board;
7.2.c.4.D. General land uses (e.g. mining, agricultural, recreation, residential, commercial, industrial, etc.) as well as specific land uses adjacent to the waters for the affected segment or stream;

7.2.c.4.E. The existing and designated uses of the receiving waters into which the segment in question discharges and the location where those downstream uses begin to occur;

7.2.c.4.F. General physical characteristics of the stream segment, including, but not limited to width, depth, bottom composition and slope;

7.2.c.4.G. Conclusive information and data of the source of the natural condition that causes the stream to exceed the water quality standard for the criterion at issue.

7.2.c.4.H. The average flow rate in the segment and the amount of flow at a designated control point and a statement regarding whether the flow of the stream is ephemeral, intermittent or perennial;

7.2.c.4.I. An assessment of aquatic life in the stream or stream segment in question and in the adjacent upstream and downstream segments; and

7.2.c.4.J. Any additional information or data that the Board deems necessary to make a decision on the application.

7.2.c.5. For the upper Blackwater River from the mouth of Yellow Creek to a point 5.1 miles upstream, when flow is less than 7Q10. Naturally occurring values for Dissolved Oxygen as established by data collected by the dischargers within this reach and reviewed by the Board and Division of Environmental Protection shall be the applicable criteria.

7.2.d. Site-specific applicability of water use categories and water quality criteria - State-wide water quality standards shall apply except where site-specific numeric criteria, variances or use removals have been approved following application and hearing, as provided in 46 C.S.R. 6. (See section 8.3 and
The following are approved site-specific criteria, variances and use reclassifications:

7.2.d.1. James River - (Reserved)
7.2.d.2. Potomac River

7.2.d.2.1. Except that a site-specific numeric criterion for aluminum, not to exceed 500 ug/l, shall apply to the section of Opequon Creek from Turkey Run to the Potomac River.

7.2.d.3. Shenandoah River - (Reserved)
7.2.d.4. Cacapon River - (Reserved)
7.2.d.5. South Branch - (Reserved)
7.2.d.6. North Branch

7.2.d.6.1 Except that the Stony River downstream from the limit of the thermal mixing zone (as established by Board Order of 11/20/75) for the Mount Storm Lake wastewater treatment facility to its confluence with the North Branch of the Potomac River is exempt from the 5°F above natural temperature rise; however, the maximum temperature outside the mixing zone shall not exceed 87°F at any time during the months of May through November and not exceed 73°F at any time during the months of December through April. This exception shall apply until the successful completion of a study conducted pursuant to section 316(a) of the Federal Act or December 31, 1998, whichever comes first.

7.2.d.7. Monongahela River

7.2.d.7.1. Except that flow in the main stem of the Monongahela River, as regulated by the Tygart Reservoir, operated by the U. S. Army Corps of Engineers, is based on a minimum flow of 345 cfs at Lock and Dam No. 8, river mile point 90.8. This exception does not apply to tributaries of the Monongahela River.

7.2.d.8. Cheat River
7.2.d.8.1. Except that in the unnamed tributary of Daugherty Run, approximately one mile upstream of Daugherty Run’s confluence with the Cheat River, a site-specific numeric criterion for iron of 3.5 mg/l shall apply and the following frequency and duration requirements shall apply to the chronic numeric criterion for selenium (5 ug/l): the four-day average concentration shall not be exceeded more than three times every three years (36 months), on average. Further, the following site-specific numeric criteria shall apply to Fly Ash Run of Daugherty Run: acute numeric criterion for aluminum: 888.5 ug/l and manganese: 5 mg/l.

7.2.d.9. Blackwater River - The Blackwater River below Davis, West Virginia shall be classified as a trout water, Category B2.

7.2.d.10. West Fork River - (Reserved)

7.2.d.11. Tygart River - (Reserved)

7.2.d.12. Buckhannon River - (Reserved)

7.2.d.13. Middle Fork River - (Reserved)

7.2.d.14. Youghiogheny River

7.2.d.14.1 Water Use Categories A and E are excluded from the tributaries of the Youghiogheny River in West Virginia which flow into Maryland.

7.2.d.15. Ohio River Main Stem - (Reserved)

7.2.d.16. Ohio River Tributaries.

7.2.d.16.1. Except that site-specific numeric criteria shall apply to the stretch of Conners Run (0-77-A), a tributary of Fish Creek, from its mouth to the discharge from Conner Run impoundment, which shall not have the Water Use Category A and may contain selenium not to exceed 62 ug/l; and iron not to exceed 3.5 mg/l as a monthly average and 7 mg/l as a daily maximum.
7.2.d.16.2. Except that a socio-economic variance shall apply to that segment of Harmon Creek (0-97) from its confluence with the Ohio River to a point 2.2 miles upstream, which shall not have water use Category A designation, and which shall have the following instream criteria: Lead 14 ug/l, Daily Maximum, Zinc 181 ug/l, Daily Maximum, Temperature 100 degree F (monitored per Footnote 12 of the permit); Iron 4.0 mg/l, Monthly Average and 8.0 mg/l, Daily Maximum (monitored per Footnote 12 of the permit). Provided, however, that the criteria for Lead, Zinc, Temperature and Iron shall not apply, and instead the state-wide criteria for these parameters shall apply, unless: Weirton Steel Corporation (1) submits to the Office of Water Resources on or before January 31, 2001 a report setting forth the water quality of the discharge from Outlet 004 for these parameters during calendar year 2000; (2) offers further proposals for any appropriate reductions in the above excepted levels; (3) provides any appropriate additional engineering analysis of potential alternatives for reducing further the concentrations of said parameters in the discharge toward achieving statewide criteria; and (4) continues to submit to the Office of Water Resources on a semi-annual basis, summary reports on the water quality of the discharge from Outlet 004 and the efforts made by Weirton Steel Corporation during the prior six (6) months to improve the quality of said discharge. Additionally Weirton Steel must determine the water quality of Harmon Creek both immediately upstream of and below the discharge of Outlet 004 at the Con Rail Bridge by sampling for Flow, pH, Total and Dissolved Lead, Total and Dissolved Zinc, Iron, Fluoride, Temperature, Turbidity, Oil and Grease and Hardness on at least a monthly basis and submit the results to the Office of Water Resources with the semi-annual report. These exceptions shall be in effect until action by the Environmental Quality Board to revise such exceptions or until June 29, 2004, whichever comes first.

7.2.d.17. Little Kanawha River - (Reserved)

7.2.d.18. Hughes River - (Reserved)

7.2.d.19. Kanawha River Zone 1 - Main Stem
7.2.d.19.1 For the Kanawha River main stem, Zone 1, Water Use Category A shall not apply; and

7.2.d.19.2. The minimum flow shall be 1,960 cfs at the Charleston gauge.

7.2.d.20. Kanawha River Zone 2 and Tributaries.

7.2.d.20.1. For the main stem of the Kanawha River only, the minimum flow shall be 1,896 cfs at mile point 72.

7.2.d.20.2. Except the stretch between the mouth of Little Scary Creek (K-31) and the Little Scary impoundment shall not have Water Use Category A. The following site-specific numeric criteria shall apply to that section: selenium not to exceed 62 ug/l and copper not to exceed 105 ug/l as a daily maximum; nor 49 ug/l as a 4-day average.

7.2.d.20.3. Except for Simmons Creek (K-54) from its mouth to a point 1200 feet upstream to which the following site-specific numeric criteria shall apply: a maximum daily temperature not to exceed 38°C (100°F) nor a monthly average temperature to exceed 34°C. This exception shall apply until the successful completion of a study conducted pursuant to section 316(a) of the Federal Act or May 30, 1998, whichever comes first.

7.2.d.21. Pocatalico River - (Reserved)

7.2.d.22. Coal River - (Reserved)

7.2.d.23. Elk River - (Reserved)

7.2.d.24. Gauley River - (Reserved)

7.2.d.25. Meadow River - (Reserved)

7.2.d.26. Cherry River - (Reserved)

7.2.d.27. Cranberry River - (Reserved)

7.2.d.28. Williams River - (Reserved)

8.1. Charts of specific water quality criteria are included in Appendix E, Table 1.

8.1.a. Specific state (i.e. total, total recoverable, dissolved, valence, etc.) of any parameter to be analyzed shall follow 40 CFR 136, Guidelines Establishing Test Procedures for Analysis of Pollutants Under the Clean Water Act, as amended, June 15, 1990. (See also 47 C.S.R. 10, section 7.3 - National Pollutant Discharge Elimination System (NPDES) Program.)

8.1.b. Compliance with aquatic life water quality criteria expressed as dissolved metal shall be determined based on dissolved metals concentrations.

8.1.b.1. The aquatic life criteria for all metals listed in Appendix E, Table 2 shall be converted to a dissolved concentration by multiplying each numerical value or criterion equation from Appendix E, Table 1 by the appropriate conversion factor (CF) from Appendix E, Table 2.

8.1.b.3. NPDES permit applicants may petition the Office of Water Resources of the Division of Environmental Protection (OWR) to develop a site-specific translator consistent with the provisions in this section. The OWR may, on a case-by-case basis require an applicant applying for a translator to conduct appropriate sediment monitoring through SEM/AVS ratio, bioassay or other approved methods to evaluate effluent limits that prevent toxicity to aquatic life.

8.1.c. An "X" or numerical value in the use columns of Appendix E, Table 1 shall represent the applicable criteria.

8.1.d. Charts of water quality criteria in Appendix E, Table 1 shall be applied in accordance with major stream and use applications, sections 6 and 7, herein.

8.2. Criteria for Toxicants

8.2.a. Toxicants which are carcinogenic have human health criteria (Water Use Categories A and C) based upon an estimated risk level of one additional cancer case per one million persons \((10^6)\) and are indicated in Appendix E, Table 1 with an endnote \((b)\).

8.2.b. A final determination on the critical design flow for carcinogens is not made in this rule, in order to permit further review and study of that issue. Following the conclusion of such review and study, the Legislature may again take up the authorization of this rule for purposes of addressing the critical design flow for carcinogens: Provided, That until such time as the review and study of the issue is concluded or until such time as the Legislature may again take up the authorization of this rule, the regulatory requirements for determining effluent limits for carcinogens shall remain as they were on the date this rule was proposed.

8.3. Variances from Specific Water Quality Criteria. A variance from numeric criteria may be granted to a discharger if it can be demonstrated that the conditions outlined in subsections 6.1.b.A - F, herein, limit the attainment of one or more specific water quality criteria. Variances shall apply only to the discharger to whom they are granted and shall be reviewed by the Board at least every three years. In granting a variance, the requirements for revision of water quality standards in 46 CSR 6 shall be followed.
8.4. Site-specific numeric criteria. The Board may establish numeric criteria different from those set forth in Appendix E, Table 1 for a stream or stream segment upon a demonstration that existing numeric criteria are either over-protective or under-protective of the aquatic life residing in the stream or stream segment. A site-specific numeric criterion will be established only where the numeric criterion will be fully protective of the aquatic life and the existing and designated uses in the stream or stream segment. The site-specific numeric criterion may be established by conducting a Water Effect Ratio study pursuant to the procedures outlined in US EPA’s “Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals” (February 1994); other methods may be used with prior approval by the Board. In adopting site-specific numeric criteria, the requirements for revision of water quality standards set forth in 46 CSR 6 shall be followed.


When a specific water quality standard has not been established by these rules and there is a discharge or proposed discharge into waters of the State, the use of which has been designated a Category B1, B2, B3 or B4, such discharge may be regulated by the Chief where necessary to protect State waters through establishment of a safe concentration value as follows:

9.1. Establishment of a safe concentration value shall be based upon data obtained from relevant aquatic field studies, standard bioassay test data which exists in substantial available scientific literature, or data obtained from specific tests utilizing one (1) or more representative important species of aquatic life designated on a case-by-case basis by the Chief and conducted in a water environment which is equal to or closely approximates that of the natural quality of the receiving waters.

9.2. In those cases where it has been determined that there is insufficient available data to establish a safe concentration value for a pollutant, the safe concentration value shall be determined by applying the appropriate application factor as set forth below to the 96-hour LC 50 value. Except where the Chief determines, based upon substantial available scientific data that an alternate application factor exists for a pollutant, the following appropriate application factors shall be used in the determination of safe concentration values:
9.2.a. Concentrations of pollutants or combinations of pollutants that are not persistent and not cumulative shall not exceed 0.10 (1/10) of the 96-hour LC 50.

9.2.b. Concentrations of pollutants or combinations of pollutants that are persistent or cumulative shall not exceed 0.01 (1/100) of the 96-hour LC 50.

9.3. Persons seeking issuance of a permit pursuant to these rules authorizing the discharge of a pollutant for which a safe concentration value is to be established using special bioassay tests pursuant to subsection 9.1 of this section shall perform such testing as approved by the Chief and shall submit all of the following in writing to the Chief:

9.3.a. A plan proposing the bioassay testing to be performed.

9.3.b. Such periodic progress reports of the testing as may be required by the Chief.

9.3.c. A report of the completed results of such testing including, but not limited to, all data obtained during the course of testing, and all calculations made in the recording, collection, interpretation and evaluation of such data.

### CATEGORY B-2 - TROUT WATERS

This list contains known trout waters and is not intended to exclude any waters which meet the definition in Section 2.28.

<table>
<thead>
<tr>
<th>River Basin</th>
<th>County</th>
<th>Stream</th>
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<td>James River</td>
<td>Monroe</td>
<td>South Fork Potts Creek</td>
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<td>Potomac River</td>
<td>Jefferson</td>
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<td>Berkeley</td>
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<td>(Above Martinsburg)</td>
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<td>(Above Route 30 Bridge)</td>
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<td>Jefferson</td>
<td>Flowing Springs Run</td>
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<td>(Above Halltown)</td>
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<td>Hampshire</td>
<td>Cold Stream</td>
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<td>Edwards Run and Impoundment</td>
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<td>Lower Cove Run</td>
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<td>North River (Above Rio)</td>
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<td>Waites Run</td>
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<td>Trout Run</td>
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1055 PC Trout Pond (Impoundment)
1056 PC Warden Lake (Impoundment)
1057 PC Rock Cliff Lake (Impoundment)
1058 PSB Hampshire Mill Creek
1059 PSB " Mill Run
1060 PSB Hardy Dumpling Creek
1061 PSB Grant-Pendleton North Fork South Branch
1062 PSB Grant North Fork Lunice Creek
1063 PSB " South Fork Lunice Creek
1064 PSB " South Mill Creek (Above Hiser)
1065 PSB " Spring Run
1066 PSB Pendleton Hawes Run (Impoundment)
1067 PSB " Little Fork
1068 PSB " South Branch
1069 PSB " (Above North Fork)
1070 PSB Seneca Creek
1071 PSB Laurel Fork
1072 PSB Big Run
1073 PNB Mineral North Fork Patterson Creek
1074 PNB " Fort Ashby (Impoundment)
1075 PNB New Creek
1076 PNB " New Creek Dam 14
1077 PNB (Impoundment)
1078 PNB Mill Creek (Above Markwood)
1079 Monongahela River
1080 M Monongalia-Marion Whiteday Creek
1081 (Above Smithtown)
1082 MC Monongalia Morgan Run
1083 MC " Coopers Rock (Impoundment)
1084 MC " Blaney Hollow
1085 MC Preston Laurel Run
1086 MC " Elsey Run
1087 MC " Saltlick Creek
1088 MC " Buffalo Creek
1089 MC " Wolf Creek
1090 MC Tucker Clover Run
1091 MC " Elklick Run
1092 MC " Horseshoe Run
1093 MC " Maxwell Run
1094 MC " Red Creek
1095 MC " Slip Hill Mill Branch
1096 MC " Thomas Park (Impoundment)
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<td>Blackwater River (Below Davis)</td>
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<td>MC</td>
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<td>East Fork Glady Fork (Above C &amp; P Compressor Station)</td>
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APPENDIX C

CATEGORY E-3 - POWER PRODUCTION

This list contains known power production facilities and is not intended to exclude any waters as described in section 6.6.c, herein.

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### CATEGORY C - WATER CONTACT RECREATION

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### APPENDIX E, TABLE 1

<table>
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<tr>
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<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
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<tr>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
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<tr>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
<td>CHRON²</td>
</tr>
</tbody>
</table>

#### 8.1 Dissolved Aluminum (µg/l)
Not to exceed:

<table>
<thead>
<tr>
<th></th>
<th>750xCF³</th>
<th>87xCF³</th>
<th>750xCF³</th>
<th>87xCF³</th>
</tr>
</thead>
</table>

#### 8.2 Ammonia (µg/l):
Un-ionized ammonia (UA) shall be determined from values of total ammonia-N, pH and temperature according to the following equation:

\[
UA = \frac{1.2(\text{total ammonia-N})}{1 + 10^{(pka+\mu-\text{pH})}}
\]

where \( pka = 0.0902 + \frac{2730}{(273.2 + T)} \) and \( T = \) temperature (°C)

The concentration of un-ionized ammonia (NH₃) shall not exceed 50 µg/l.
<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>USE DESIGNATION</th>
<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
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<tr>
<td></td>
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<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
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<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
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</table>

8.2.1 Acute and chronic aquatic life criteria for ammonia shall be determined using the National Criterion for Ammonia in Fresh Water⁴ from USEPA’s 1999 Update of Ambient Water Quality Criteria for Ammonia (EPA-822-R-99-014, December 1999)

<table>
<thead>
<tr>
<th>8.3 Antimony (ug/l)</th>
<th>Not to exceed:</th>
<th></th>
<th>4300</th>
<th>14</th>
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<tr>
<td>8.4 Arsenic³ (ug/l)</td>
<td>Not to exceed:</td>
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<td>50</td>
<td>50</td>
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<tr>
<td>8.4.1 Dissolved Trivalent Arsenic</td>
<td>Not to exceed:</td>
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<td>360 x CF³</td>
<td>190 x CF³</td>
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<tr>
<td>8.7 Cadmium (ug/l)</td>
<td>Hardness Soluble Cd</td>
<td>(mg/l CaCO₃)</td>
<td></td>
<td></td>
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<tr>
<td>0 - 35</td>
<td>1.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36 - 75</td>
<td>2.0</td>
<td></td>
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<tr>
<td>76 - 150</td>
<td>5.0</td>
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<tr>
<td>&gt; 150</td>
<td>10.0</td>
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<td>PARAMETER</td>
<td>USE DESIGNATION</td>
<td>AQUATIC LIFE</td>
<td>HUMAN HEALTH</td>
<td>ALL OTHER USES</td>
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<td></td>
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<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
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<tr>
<td></td>
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<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
<tr>
<td>8.7.1</td>
<td>Not to exceed 10 μg/l in the Ohio River (O Zone 1) main stem (see section 7.1.d, herein)</td>
<td></td>
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<tr>
<td>8.7.3</td>
<td>The four-day average concentration of dissolved cadmium shall not exceed the value determined by the following equation: ( Cd = \left(0.7852 (\ln(\text{dis}) - 3.490) \times CF^5 \right) )</td>
<td>X</td>
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</tr>
<tr>
<td>8.7.4</td>
<td>The one-hour average concentration of dissolved cadmium shall not exceed the value determined by the following equation: ( Cd = \left(1.128 (\text{dis}) - 3.820 \right) \times CF^5 )</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.8</td>
<td>Chloride (mg/l)</td>
<td>Not to exceed:</td>
<td>860</td>
<td>230</td>
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</table>
### APPENDIX E, TABLE 1

<table>
<thead>
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<th>PARAMETER</th>
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<th>ALL OTHER USES</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C&lt;sup&gt;3&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE&lt;sup&gt;1&lt;/sup&gt;</td>
<td>CHRON&lt;sup&gt;2&lt;/sup&gt;</td>
<td>ACUTE&lt;sup&gt;1&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

8.9.1 Chromium, dissolved hexavalent (ug/l): Not to exceed:

$16 \times CF^3 \quad 11 \times CF^3 \quad 16 \times CF^3 \quad 7.2 \times CF^3 \quad 50$

8.9.2 Chromium, trivalent (ug/l) The one-hour average concentration of dissolved trivalent chromium shall not exceed the value determined by the following equation:

$\exp(0.8190[\ln(\text{hardness})]+3.7256) \times (CF^3)$

X \quad X

8.9.3 The four-day average concentration of dissolved trivalent chromium shall not exceed the value determined by the following concentration:

$\exp(0.8190[\ln(\text{hardness})]+0.6848) \times (CF^3)$

X \quad X

8.10 Copper (ug/l) Not to exceed:

$1000$

8.10.1 The four-day average concentration of dissolved copper shall not exceed the value determined by the following equation:

$Cu = e^{(0.8545[\ln(\text{hardness})]+1.465)} \times CF^3$

X \quad X
## APPENDIX E, TABLE 1

<table>
<thead>
<tr>
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<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
<td>CHRON²</td>
</tr>
</tbody>
</table>

### 8.10.2 The one-hour average concentration of dissolved copper shall not exceed the value determined by the following equation:

\[ \text{Cu} = e^{(0.9422 \ln(\text{hardness}) - 1.464)} \times CF^5 \]

| | X | X |

### 8.11 Cyanide (ug/l)
(As free cyanide HCN+CN⁻)
Not to exceed:

| | 22 | 5.0 | 22 | 5.0 | 5.0 | 5.0 |

### 8.12 Dissolved Oxygen³: not less than 5 mg/l at any time.

| | X | X | X | X |

### 8.12.1 Kanawha River main stem, Zone 1 - Not less than 4.0 mg/l at any time.

<p>| | X | | | | |</p>
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<thead>
<tr>
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<td>B1, B4</td>
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<td></td>
<td>ACUTE¹</td>
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<tr>
<td>8.12.2 Ohio River main stem - the average concentration shall not be less than 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time or place outside any established mixing zone - provided that a minimum of 5.0 mg/l at any time is maintained during the April 15-June 15 spawning season.</td>
<td>X</td>
</tr>
<tr>
<td>8.12.3 Not less than 7.0 mg/l in spawning areas and in no case less than 6.0 mg/l at any time.</td>
<td></td>
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<tr>
<td>8.13 Fecal Coliform: Maximum allowable level of fecal coliform content for Primary Contact Recreation (either MPN or MF) shall not exceed 200/100 ml as a monthly geometric mean based on not less than 5 samples per month; nor to exceed 400/100 ml in more than ten percent of all samples taken during the month.</td>
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<td>B1, B4</td>
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<tr>
<td>ACUTE¹</td>
<td>CHRON²</td>
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</tbody>
</table>

8.13.1 Ohio River main stem (zone 1) - During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000/100 ml as a monthly geometric mean based on not less than 5 samples per month.

8.14 Fluoride (mg/l)
- Not to exceed: 8.14.1 Not to exceed 2.0 for category D uses.

8.15 Iron² (mg/l)
- Not to exceed: 1.5

<p>| | | | |</p>
<table>
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<td>X</td>
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<td>8.14.1</td>
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<tr>
<td>8.15</td>
<td>1.5</td>
<td>0.5</td>
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**APPENDIX E, TABLE 1**

<table>
<thead>
<tr>
<th>USE DESIGNATION</th>
<th>PARAMETER</th>
<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
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<tbody>
<tr>
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<td>B1, B4</td>
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<td>C³</td>
<td>A⁴</td>
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<td></td>
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<td>ACUTE¹</td>
<td>ACUTE¹</td>
<td>CHRON²</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE¹</td>
<td>ACUTE¹</td>
<td>CHRON²</td>
</tr>
<tr>
<td><strong>8.16 Lead (µg/l)</strong></td>
<td>Not to exceed:</td>
<td></td>
<td></td>
<td>50</td>
</tr>
<tr>
<td><strong>8.16.1 The four-day average concentration of dissolved lead shall not exceed the value determined by the following equation:</strong></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$P_b = e^{(1.275\text{[hardness]})-4.705} \times \text{CF}^5$</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>8.16.2 The one-hour average concentration of dissolved lead shall not exceed the value determined by the following equation:</strong></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$P_b = e^{(1.275\text{[hardness]})-1.46} \times \text{CF}^5$</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>8.17 Manganese (mg/l) (see 6.2.d) Not to exceed:</strong></td>
<td></td>
<td></td>
<td></td>
<td>1.0</td>
</tr>
<tr>
<td><strong>8.18 Mercury</strong></td>
<td>The total organism body burden of any aquatic species shall not exceed 0.5 µg/g as methylmercury.</td>
<td></td>
<td>0.5</td>
<td>0.5</td>
</tr>
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<td>HUMAN HEALTH</td>
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<td>----------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
<tr>
<td>8.18.1</td>
<td>Total mercury in any unfiltered water sample shall not exceed (ug/l):</td>
<td>2.4</td>
<td>2.4</td>
<td>0.15</td>
</tr>
<tr>
<td>8.18.2</td>
<td>Methylmercury (water column) Not to exceed (ug/l):</td>
<td>.012</td>
<td>.012</td>
<td></td>
</tr>
<tr>
<td>8.19</td>
<td>Nickel (ug/l)</td>
<td>Not to exceed:</td>
<td>4600</td>
<td>510</td>
</tr>
<tr>
<td>8.19.1</td>
<td>The four-day average concentration of dissolved nickel shall not exceed the value determined by the following equation¹:</td>
<td>Ni = e^{(0.846(ln(Ni/10000))+1.164)} x CF³</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.19.2</td>
<td>The one-hour average concentration of dissolved nickel shall not exceed the value determined by the following equation¹:</td>
<td>Ni = e^{(0.846(ln(Ni/10000))+1.361)} x CF³</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>PARAMETER</td>
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<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td>ACUTE ¹</td>
<td></td>
<td>ACUTE ¹</td>
<td>CHRON²</td>
<td></td>
</tr>
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<td></td>
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<td>AQUATIC LIFE</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8.20 Nitrate (as Nitrate-N) (mg/l)</td>
<td>10</td>
<td>0.46</td>
</tr>
<tr>
<td>8.21 Nitrite (as Nitrite-N) (mg/l)</td>
<td></td>
<td></td>
<td></td>
<td>0.024</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.071</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>2.3</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>0.73</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.045</td>
</tr>
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## APPENDIX E, TABLE 1

### USE DESIGNATION

<table>
<thead>
<tr>
<th>PARAMETER</th>
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<th>HUMAN HEALTH</th>
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<tbody>
<tr>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
<tr>
<td>Methoxychlor (µg/l)</td>
<td>0.03</td>
<td>0.03</td>
<td>0.03</td>
</tr>
<tr>
<td>Dioxin (2,3,7,8- TCDD)b (pg/l)</td>
<td></td>
<td>0.014</td>
<td>0.013</td>
</tr>
<tr>
<td>Acrylonitrileb (µg/l)</td>
<td></td>
<td>0.66</td>
<td>0.059</td>
</tr>
<tr>
<td>Benzeneb (µg/l)</td>
<td></td>
<td>71</td>
<td>0.66</td>
</tr>
<tr>
<td>1,2-dichlorobenzene (mg/l)</td>
<td></td>
<td>17</td>
<td>2.7</td>
</tr>
<tr>
<td>1,3-dichlorobenzene (mg/l)</td>
<td></td>
<td>2.6</td>
<td>0.4</td>
</tr>
<tr>
<td>1,4-dichlorobenzene (mg/l)</td>
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<td>2.6</td>
<td>0.4</td>
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<tr>
<td>2,4-dinitrotolueneb (µg/l)</td>
<td></td>
<td>9.1</td>
<td>0.11</td>
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<tr>
<td>Hexachlorobenzeneb (ng/l)</td>
<td></td>
<td>0.77</td>
<td>0.72</td>
</tr>
<tr>
<td>Carbon tetrachlorideb (µg/l)</td>
<td></td>
<td>4.4</td>
<td>0.25</td>
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## APPENDIX E, TABLE 1

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<td>B2</td>
<td>C^3</td>
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<tr>
<td></td>
<td>ACUTE^1</td>
<td>CHRON^2</td>
<td>ACUTE^1</td>
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<tr>
<td>Chloroform^b (ug/l)</td>
<td></td>
<td></td>
<td>470</td>
</tr>
<tr>
<td>Halomethanes (ug/l)</td>
<td></td>
<td></td>
<td>15.7</td>
</tr>
<tr>
<td>1,2-dichloroethane^b (ug/l)</td>
<td>99</td>
<td></td>
<td>0.035</td>
</tr>
<tr>
<td>1,1,1- trichloroethane^b (mg/l)</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1,1,2,2-tetrachloroethane (ug/l)</td>
<td>11</td>
<td></td>
<td>0.17</td>
</tr>
<tr>
<td>1,1-dichloroethylene^b (ug/l)</td>
<td>3.2</td>
<td></td>
<td>0.03</td>
</tr>
<tr>
<td>Trichloroethylene^b (ug/l)</td>
<td>81</td>
<td></td>
<td>2.7</td>
</tr>
<tr>
<td>Tetrachloroethylene^b (ug/l)</td>
<td>8.85</td>
<td></td>
<td>0.8</td>
</tr>
<tr>
<td>Toluene^b (mg/l)</td>
<td>200</td>
<td></td>
<td>6.8</td>
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### APPENDIX E, TABLE I

<table>
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<tbody>
<tr>
<td></td>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td>Polynuclear Aromatic Hydrocarbons (PAH)³</td>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td></td>
</tr>
<tr>
<td>Phthalate esters (ug/l)</td>
<td></td>
<td>3.0</td>
<td>3.0</td>
<td>0.031</td>
</tr>
<tr>
<td>Vinyl chloride (chloroethene)(ug/l)</td>
<td></td>
<td></td>
<td></td>
<td>525</td>
</tr>
<tr>
<td>alpa-BHC (alpha- Hexachlorocyclohexane)³</td>
<td></td>
<td></td>
<td></td>
<td>0.013</td>
</tr>
<tr>
<td>beta-BHC (beta- Hexachlorocyclohexane)³</td>
<td></td>
<td></td>
<td></td>
<td>0.046</td>
</tr>
<tr>
<td>gamma-BHC (gamma- Hexachlorocyclohexane)³</td>
<td></td>
<td>2.0</td>
<td>0.08</td>
<td>2.0</td>
</tr>
<tr>
<td>Chlorobenzene (mg/l)</td>
<td></td>
<td></td>
<td></td>
<td>21</td>
</tr>
<tr>
<td>Ethylbenzene (mg/l)</td>
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<td>29</td>
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# APPENDIX E, TABLE 1

<table>
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<tbody>
<tr>
<td></td>
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<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
<tr>
<td>Heptachlor³ (ng/l)</td>
<td></td>
<td>520</td>
<td>3.8</td>
<td>520</td>
</tr>
<tr>
<td>2-methyl-4,6-Dinitrophenol (ug/l)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fluoranthene (ug/l)</td>
<td></td>
<td></td>
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</tbody>
</table>

8.22.1 The organic chemicals listed in 8.22 shall not exceed the specified water quality criteria. When the specified criteria are less than the practical laboratory quantification level, instream values will be calculated from discharge concentrations and flow rates—where applicable.

8.23 pH
No values below 6.0 nor above 9.0. Higher values due to photosynthetic activity may be tolerated.
<table>
<thead>
<tr>
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<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td>B1, B4</td>
<td>B2</td>
<td>C^3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE^1</td>
<td>CHRON^2</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE^1</td>
<td>CHRON^2</td>
<td></td>
</tr>
<tr>
<td>8.24 Phenolic Materials</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>8.24.1 Phenol (ug/l) Not to exceed:</td>
<td></td>
<td>10,200</td>
<td>2,560</td>
<td>10,200</td>
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<tr>
<td>8.24.2 2-Chlorophenol (ug/l) Not to exceed:</td>
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<tr>
<td>8.24.3 2,4-Dichlorophenol (ug/l) Not to exceed:</td>
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<tr>
<td>8.24.4 2,4-Dimethylphenol (ug/l) Not to exceed:</td>
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<td></td>
<td></td>
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<tr>
<td>8.24.5 2,4-Dinitrophenol (ug/l) Not to exceed:</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.24.6 Pentachlorophenol (ug/l)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.24.6.a The one-hour average concentration of pentachlorophenol shall not exceed the value determined by the following equation:</td>
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</tbody>
</table>
### APPENDIX E, TABLE 1

<table>
<thead>
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<th>PARAMETER</th>
<th>USE DESIGNATION</th>
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<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
</tbody>
</table>

8.24.6.b The 4-day average concentration of pentachlorophenol shall not exceed the value determined by the following equation: 
\[ \text{exp}(1.005\text{pH})^{-5.134}. \]

8.24.7 2,4,6-Trichlorophenol (ug/l) Not to exceed:

8.25 Radioactivity:
\[ C_{\text{gross beta}} \text{ activity not to exceed 1000 picocuries per liter (pCi/l), nor shall activity from dissolved strontium-90 exceed 10 pCi/l, nor shall activity from dissolved alpha emitters exceed 3 pCi/l.} \]

8.25.1 Gross total alpha particle activity (including radium-226 but excluding radon and uranium shall not exceed 15 pCi/l and combined radium-226 and radium-228 shall not exceed 5pCi/l; provided that the specific determination of radium-226 and radium-228 are not required if dissolved particle activity does not exceed 5pCi/l;
the concentration of tritium shall not exceed 20,000 pCi/I; the concentration of total strontium-90 shall not exceed 8 pCi/I in the Ohio River main stem.

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>USE DESIGNATION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AQUATIC LIFE</td>
</tr>
<tr>
<td></td>
<td>B1, B4 ACUTE¹ CHRON²</td>
</tr>
<tr>
<td></td>
<td>B2 ACUTE¹ CHRON²</td>
</tr>
<tr>
<td>Selenium (μg/l)</td>
<td></td>
</tr>
<tr>
<td>Not to exceed:</td>
<td>20</td>
</tr>
<tr>
<td>Silver (μg/l)</td>
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</tr>
<tr>
<td>Hardness</td>
<td>Silver</td>
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<tr>
<td>0-50</td>
<td>1</td>
</tr>
<tr>
<td>51-100</td>
<td>4</td>
</tr>
<tr>
<td>101-200</td>
<td>12</td>
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<tr>
<td>&gt;201</td>
<td>24</td>
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<td>8.27.1</td>
<td></td>
</tr>
<tr>
<td>0-50</td>
<td>1</td>
</tr>
<tr>
<td>51-100</td>
<td>4</td>
</tr>
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<td>101-200</td>
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<td>201-400</td>
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<td>401-500</td>
<td>30</td>
</tr>
<tr>
<td>501-600</td>
<td>43</td>
</tr>
</tbody>
</table>
8.27.2 The one-hour average concentration of dissolved silver shall not exceed the value determined by the following equation:

\[ Ag = (1.721 \times 10^{-6}) \times C_{FS} \]

8.28 Temperature

Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 87°F at any time during months of May through November and not to exceed 73°F at any time during the months of December through April. During any month of the year, heat should not be added to a stream in excess of the amount that will raise the temperature of the water more than 5°F above natural temperature. In lakes and reservoirs, the temperature of the epilimnion should not be raised more than 3°F by the addition of heat of artificial origin. The normal daily and seasonal temperature fluctuations that existed before the addition of heat due to other natural causes should be maintained.
<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ACUTE¹</td>
<td>CHRON²</td>
<td>ACUTE¹</td>
</tr>
<tr>
<td>8.28.1</td>
<td>For the Kanawha River Main Stem (K-1): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 90°F in any case.</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.28.2</td>
<td>For the Bluestone R (KNB), Bluestone Lake (KN-60) East River (KNE), New River (KN), Gauley R. (KG) and Greenbrier River (KNG): Temperature rise shall be limited to no more than 5°F above natural temperature, not to exceed 81°F at any time during the months of May through November and not to exceed 73°F at any time during December through April.</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.28.3</td>
<td>No heated effluents will be discharged in the vicinity of spawning areas. The maximum temperatures for cold waters are expressed in the following table: Daily Hourly Mean °F Max °F Oct-Apr 50 55 Sep-May 58 62 Jun-Aug 66 70</td>
<td></td>
<td></td>
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APPENDIX E, TABLE 1

<table>
<thead>
<tr>
<th>PARAMETER</th>
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<tr>
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</tr>
<tr>
<td></td>
<td>B1, B4</td>
</tr>
<tr>
<td></td>
<td>ACUTE¹</td>
</tr>
</tbody>
</table>

| Dates     | Ave. | Max. | | | | |
|-----------|------|------| | | | |
| Jan 1-31  | 45°F | 50°F | | | | |
| February  | 45   | 50   | | | | |
| March 1-15| 51   | 56   | | | | |
| March 16-31| 54 | 59 | | | | |
| April 1-15| 58 | 64 | | | | |
| April 16-30| 64 | 69 | | | | |
| May 1-15  | 68   | 73   | | | | |
| May 16-31 | 75   | 80   | | | | |
| June 1-15 | 80   | 85   | | | | |
| June 16-30| 83   | 87   | | | | |
| July 1-31 | 84   | 89   | | | | |
| August 1-31| 84 | 89 | | | | |
| Sept 1-15 | 84   | 87   | | | | |
| Sept 16-30| 82   | 86   | | | | |
| Oct 1-15  | 77   | 82   | | | | |
| Oct 16-31 | 72   | 77   | | | | |
| Nov 1-30  | 67   | 72   | | | | |
| Dec 1-31  | 52   | 57   | X | | | |

8.28.4 For Ohio River Main Stem (01)(section 7.1.d, herein):
## APPENDIX E, TABLE 1

<table>
<thead>
<tr>
<th>USE DESIGNATION</th>
<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td>AQUATIC LIFE</td>
<td>ACUTE¹ CHRON²</td>
<td>ACUTE¹ CHRON²</td>
<td></td>
</tr>
<tr>
<td>8.29 Thallium (ug/l)</td>
<td></td>
<td></td>
<td>6.3</td>
</tr>
<tr>
<td>8.30 Threshold odor[^a] Not to exceed a threshold odor number of 8 at 104°F as a daily average.</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>8.31 Total Residual Chlorine (ug/l - measured by amperometric or equivalent method) Not to exceed:</td>
<td>19</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>8.31.1 No chlorinated discharge allowed</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>8.32 Turbidity No point or non-point source to West Virginia's waters shall contribute a net load of suspended matter such that the turbidity exceeds 10 NTU's over background turbidity when the background is 50 NTU or less, or have more than a 10% increase in turbidity (plus 10 NTU minimum) when the background turbidity is more than 50 NTUs</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
This limitation shall apply to all earth disturbance activities and shall be determined by measuring stream quality directly above and below the area where drainage from such activity enters the affected stream. Any earth disturbing activity continuously or intermittently carried on by the same or associated persons on the same stream or tributary segment shall be allowed a single net loading increase.

8.32.1 This rule shall not apply to those activities at which Best Management Practices in accordance with the State's adopted 208 Water Quality Management Plan are being utilized, maintained and completed on a site-specific basis as determined by the appropriate 208 cooperative or an approved Federal or State Surface Mining Permit is in effect. This exemption shall not apply to Trout Waters.
### APPENDIX E, TABLE 1

#### USE DESIGNATION

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>AQUATIC LIFE</th>
<th>HUMAN HEALTH</th>
<th>ALL OTHER USES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B1, B4</td>
<td>B2</td>
<td>C³</td>
</tr>
<tr>
<td>ACUTE¹</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>CHRON²</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

#### 8.33 Zinc (μg/l)

The four-day average concentration of dissolved zinc shall not exceed the value determined by the following equation:

\[ Zn = e^{(0.8473 \text{[sludge]} + 0.7614)} \times CF^3 \]

The one-hour average concentration of dissolved zinc shall not exceed the value determined by the following equation:

\[ Zn = e^{(0.8473 \text{[sludge]} + 0.8604)} \times CF^3 \]

1. One hour average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.
2. Four-day average concentration not to be exceeded more than once every three years on the average, unless otherwise noted.
3. These criteria have been calculated to protect human health from toxic effects through fish consumption, unless otherwise noted.
4. These criteria have been calculated to protect human health from toxic effects through drinking water and fish consumption, unless otherwise noted.
5. The appropriate Conversion Factor (CF) is a value used as a multiplier to derive the dissolved aquatic life criterion is found in Appendix E, Table 2.
a Hardness as calcium carbonate (mg/l). The minimum hardness allowed for use in this equation shall not be less than 25 mg/l, even if the actual ambient hardness is less than 25 mg/l. The maximum hardness value for use in this equation shall not exceed 400 mg/l even if the actual hardness is greater than 400 mg/l.

b Known or suspected carcinogen. Human health standards are for a risk level of $10^{-6}$.

c May not be applicable to wetlands (B4) - site-specific criteria are desirable.

d The early life stage equation in the National Criterion shall be used to establish chronic criteria throughout the state unless the applicant demonstrates that no early life stages of fish occur in the affected water(s).

APPENDIX E

TABLE 2
Conversion Factors

<table>
<thead>
<tr>
<th>Metal</th>
<th>Acute</th>
<th>Chronic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aluminum</td>
<td>1.000</td>
<td>1.000</td>
</tr>
<tr>
<td>Arsenic (III)</td>
<td>1.000</td>
<td>1.000</td>
</tr>
<tr>
<td>Cadmium</td>
<td>$1.136672-[(\ln \text{hardness}) (0.041838)]$</td>
<td>$1.101672-[(\ln \text{hardness}) (0.041838)]$</td>
</tr>
<tr>
<td>Chromium (III)</td>
<td>0.316</td>
<td>0.860</td>
</tr>
<tr>
<td>Chromium(VI)</td>
<td>0.982</td>
<td>0.962</td>
</tr>
<tr>
<td>Copper</td>
<td>0.960</td>
<td>0.960</td>
</tr>
<tr>
<td>Lead</td>
<td>$1.46203-[(\ln \text{hardness})(0.145712)]$</td>
<td>$1.46203-[(\ln \text{hardness})(0.145712)]$</td>
</tr>
<tr>
<td>Nickel</td>
<td>0.998</td>
<td>0.997</td>
</tr>
<tr>
<td>Silver</td>
<td>0.85</td>
<td>N/A</td>
</tr>
<tr>
<td>Zinc</td>
<td>0.978</td>
<td>0.986</td>
</tr>
</tbody>
</table>
46-1-4A. Applicability.

**4A.1.** Except as noted, the antidegradation implementation procedures herein apply to regulated activities that have the potential to affect water quality. The level of review required will depend upon the existing uses of the water segment that would be affected, the level of protection ("tier") assigned to the applicable water segment, the nature of the activity, and the extent to which existing water quality would be degraded.

**4A.2.** Nonpoint source activities will be deemed to be in compliance with antidegradation requirements with the installation and maintenance of cost-effective and reasonable best management practices in accordance with 46 CSR 1-4.1.b. herein. These include, but are not limited to, best management practice programs for silviculture administered by the Division of Forestry, programs for oil and gas operations administered by the Office of Oil and Gas of the Division of Environmental Protection, nonpoint source construction activities, and reasonable land, soil and water conservation measures and practices applied to agricultural nonpoint sources.

**4A.3.** Where applicable and practical, the antidegradation procedure and review shall be integrated into and proceed concurrently with existing environmental processes and reviews pursuant to the National Environmental Policy Act.

**4A.4.** Information contained within existing environmental processes and reviews, such as environmental assessments, environmental impact statements, facilities plans, and findings of no significant impact, may be used to provide part or all of the requirements of the antidegradation procedure and review.

46-1-4B. Definitions.

**4B.1.** For purposes of this Subpart (Appendix F) the term “agency” or “agencies” refers to the Division of Environmental
Protection or other federal, state, or local governmental entities with regulatory authority over activities that may affect water quality.

**4B.2.** For purposes of this Subpart (Appendix F) the term "regulated entity" refers generally to any regulated entity that affects or is proposing an activity that will affect water quality. For example, an applicant for a WV/NPDES permit, a WV/NPDES permit holder, or an owner or operator of an activity that discharges pollutants into a water of the state would be a regulated entity.

**4B.3.** For purposes of this Subpart (Appendix F) the term "minimum uses" refers to recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

**46-1-4C. Antidegradation Review Process.**

**4C.1.** As set forth in 46 CSR 1-4.1, the State's antidegradation policy requires that existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. This requirement applies to all waters of the state.

**4C.2.** Except where a water segment is specifically listed as a Tier 2.5 or Tier 3 water, the following section outlines how the agency conducting the antidegradation review will determine the level of protection ("tier") assigned to the receiving water body associated with the activity subject to this rule.

**4C.3.** Uses. The Director, in conducting an antidegradation review, must determine the existing uses of the receiving water body associated with the proposed activity. The Director shall determine the existing uses of the water body by identifying the uses set forth in 46 CSR 1 Section 6 that the water body currently supports, or has supported since November 28, 1975. The regulated entity may be required to provide data sufficient for the permitting agency to determine the existing uses of the water segment.

**4C.4.** Baseline water quality. Where baseline water quality has not been established for the water segment the regulated entity proposes to impact or has not been established for a parameter of concern that is reasonably expected to be discharged into the
water segment as a result of the proposed regulated activity, the Director must determine the baseline water quality for the receiving water body. The Director may consider data for establishing the baseline water quality from a federal or state agency, the regulated entity, the public, or any other source, as long as the data are recent and reliable. If adequate data are not available, the agency may, in conjunction with the regulated entity or on its own initiative, establish a plan for obtaining the necessary data. The regulated entity may be required to provide baseline water quality for those parameters of concern that are reasonably expected to be discharged as a result of the regulated activity into the affected water segment to help the permitting agency determine the baseline water quality, the existing uses, and the applicable tier. The regulated entity may contact the Director prior to initiating a baseline water quality evaluation to seek concurrence with its determination of the parameters of concern for its proposed activity and its proposed sampling protocol.

4C.5. Determination of tier. If the tier has not already been determined for the water segment the regulated entity proposes to impact, then after determining the baseline water quality for parameters of concern and the existing uses for a water body, the agency will determine which level of protection (i.e. “tier”) applies to the receiving water body associated with the activity.

4C.5.a. Water segments listed in Appendix F-2 of this rule shall receive Tier 2.5 protection.

4C.5.b. Water segments within a federally designated Wilderness Area, as well as other water segments specifically listed in this rule as an outstanding national resource water shall receive Tier 3 protection.

4C.5.c. Water segments not within a federally designated Wilderness Area and not listed in Appendix F-2 of this rule shall receive Tier 1 protection, and shall receive Tier 2 protection if the water segment is determined, pursuant to 4E.1.a. through 4E.1.c. of this rule, to be a high quality water for purposes of antidegradation review.
4C.5.d. Water segments may be determined to receive only Tier 1 protection, pursuant to 4D.2. through 4D.6. of this rule, for purposes of antidegradation review.

4C.5.e. To the extent practicable, a list of water segments protected under Tier 2.5 or Tier 3 will be maintained on the West Virginia Division of Environmental Protection’s website.

4C.6. Level of review. Once the correct level of protection (“tier”) and water segment use(s) are identified for the receiving water body, the agency shall document its findings and proceed with the appropriate level of antidegradation review.

4C.7. On or after the effective date of these implementation procedures, new and reissued WV/NPDES general permits will be evaluated to consider the potential for significant degradation as a result of the permitted activity. Regulated activities that are granted coverage by a WV/NPDES general permit will not be required to undergo a Tier 2 antidegradation review as part of the permit registration process. Regulated activities that are granted coverage by a WV/NPDES permit that will degrade a Tier 2.5 or Tier 3 water segment must comply with the requirements of 4F and 4G herein.

4C.8. Regulated activities that qualify for coverage under a Corps of Engineers regional or nationwide permit pursuant to section 404 of the Federal Act that has been certified by the state pursuant to section 401 of the Federal Act will not be required to undergo a Tier 2 antidegradation review, provided, however, that where an individual 401 certification is required, the Director may require an appropriate antidegradation review. Where an activity covered by a regional or nationwide permit pursuant to section 404 of the Federal Act and certified pursuant to section 401 of the Federal Act allows for filling of a water, this exemption only applies to the site of the fill, and does not apply to activities downstream of the site of the fill. Regulated activities that are granted section 401 certification that will degrade a Tier 2.5 or Tier 3 water segment must comply with the requirements of 4F and 4G herein.

4C.9. The Director shall develop guidance which addresses these implementation procedures and provides additional information to persons conducting regulated activities that are af-
Such guidance shall include, but shall not be limited to, information regarding the following: (a) the determination of baseline water quality; (b) social and economic importance pursuant to section 4E.4; and (c) the reasonable alternatives analysis required by section 4E.3. The Director shall provide an opportunity for public review and comment before finalizing any guidance. Within twelve months of the effective date of this rule, the Director shall report to the advisory committee established pursuant to W.Va. Code §22-1-9 regarding the status of its implementation.

46-1-4D. Tier 1 Protection.

4D.1. Existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

4D.2. Tier 1 protection applies to all waters of the state. A water segment shall be afforded Tier 1 protection where the level of water quality is not sufficient to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, or where the water quality meets but does not exceed levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

4D.3. In determining whether a water segment is afforded only Tier 1 protection, the agency will focus on whether the water segment is meeting or failing to meet minimum uses, except that, notwithstanding any other provision of this rule, the main stems of the Monongahela River, and the Kanawha River from milepoint 72 to the confluence with the Ohio River shall be afforded Tier 1 protection only.

4D.4. The Director will consider whether a water segment is listed on the state's 303(d) impaired waters list, but where the parameter(s) for which the water segment is listed does not result in that water segment's failure to attain minimum uses and where all other parameters exceed the quality necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life, the water segment will be afforded Tier 2 protection. Where the parameter(s) for which the water segment is listed does result in failure to attain minimum uses, such as an acid mine
4D.5. All water segments listed on the state’s 303(d) impaired waters list will be afforded only Tier 1 protection for the parameter(s) that resulted in the water segment being listed.

4D.6. There also may be waters in the state where one or both of the fishable/swimmable uses are attained, but existing water quality is not “better than necessary” to support those uses (i.e., assimilative capacity does not exist for any of the parameters that would be affected by the proposed activity). Tier 1 protection is appropriate for such a water segment.

4D.7. Where existing uses of the water body are impaired, there shall be no lowering of the water quality with respect to the parameters of concern that are causing the impairment. The agency shall consider nomination of such water body for the 303(d) list of water quality-impaired streams.

4D.8. Where a proposed activity will result in a new or expanded discharge that would otherwise prevent attainment of an existing use in a water subject to Tier 1 protection, the applicant may be allowed to satisfy antidegradation review requirements by implementing or financing upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Director. A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trade must be enforceable.

46-1-4E. Tier 2 Protection (High Quality Waters).
4E.1. Tier 2 protection.

4E.1.a. A water segment shall be considered a Tier 2 high quality water where the level of water quality exceeds levels necessary to support recreation and wildlife and the propagation and maintenance of fish and other aquatic life.

4E.1.b. Tier 2 waters need not exceed the level of quality needed to meet or exceed numeric criteria for every parameter. Water segments that support the minimum fishable/swimmable uses and have assimilative capacity remaining for some parameters shall generally be afforded Tier 2 protection. For example, a water segment listed on the state's 303(d) impaired waters list can qualify for Tier 2 protection, but where the impairment that caused the water segment to be listed results in failure to attain minimum uses, that water segment will be afforded only Tier 1 protection.

4E.1.c. Where a water segment does not meet or exceed applicable water quality criteria for every parameter, the Director will determine whether the water segment will be afforded Tier 2 protection as part of the antidegradation review process using best professional judgment. In addition to data available for review, the Director may consider factors such as (1) existing aquatic life uses, (2) existing recreational or aesthetic uses, (3) existing water quality data for upstream segments or comparable segments, (4) biological score for the water segment, and (5) the overall value of the segment from an ecological, health and public use perspective.

4E.1.d. Where insufficient information is available to determine which tier should apply, a regulated entity may seek a determination that a water segment should be afforded only Tier 1 protection by submitting water quality data consistent with guidance developed pursuant to subdivision 4C.9. of this rule showing that there is no remaining assimilative capacity for any parameter to be affected by its activity. In seeking such a determination, the impacts of all of the regulated entity's activities on the water segment must be considered.

4E.1.e. Where there is insufficient information to establish which tier should apply, it is the intent of these procedures to apply Tier 2 protection to such waters until such time as sufficient water quality data is obtained to determine the appropriate level of protec-
4E.2. Tier 2 antidegradation review.

4E.2.a. Any regulated activity in a Tier 2 water segment is required to go through the Tier 2 antidegradation review process where:

4E.2.a.1. The regulated activity is a new or expanded activity that would significantly degrade water quality; or

4E.2.a.2. the Director determines, upon renewal of a permit or certification, that other individual circumstances warrant a full review such as cumulative degradation resulting from multiple discharges within a watershed, degradation resulting from a single discharge over time, or degradation caused by a regulated facility's historic noncompliance with its permit.

4E.2.b. In allowing any degradation, the agency shall assure water quality adequate to protect existing uses fully (i.e., Tier 1 protection).

4E.2.c. The Director may determine that certain types or classes of activities should be exempt from Tier 2 review after balancing the relative impact of the activities on water quality against the overall benefit of the activities to public health and welfare or the environment. The Director's discretion to exempt activities from review pursuant to this section shall be exercised and construed narrowly. Such types or classes of activities may include, for example, expansions or improvements to publicly owned wastewater treatment facilities or activities, public benefit activities by governmental entities, or discharges related to environmental remediation activities. Where the agency tentatively determines to grant an exemption under this provision, notice of this determination must be included in any required public notice, such as public notice required prior to issuance of an NPDES permit. The Director's final determination is a final decision and subject to appeal to the Environmental Quality Board.

4E.2.c.1. A proposed new or expanded discharge from a publicly owned or publicly owned and privately operated sanitary wastewater treatment plant constructed or operated to alleviate a
public health concern associated with failing septic systems or un-
treated or inadequately treated sewage, is exempt from Tier 2 re-
view. This exemption would include combined sewer overflow
elimination or reduction projects affecting one or more water bodies
and applies only where there will be a net decrease in the overall
pollutant loading discharged to the combined receiving waters.

4E.2.d. Degradation for Tier 2 shall be deemed significant
if the activity results in a reduction in the water segment’s available
assimilative capacity (the difference between the baseline water
quality and the water quality criteria) of ten percent or more at the
appropriate critical flow condition(s) for parameters of concern.
Critical flow conditions for non-precipitation induced discharges are
the 7Q10 flow of the receiving stream, plus either of the following:
maximum permitted flow or maximum flow specified in the appli-
cation, for industrial activities, or the average design flow, for
wastewater treatment activities. Degradation will also be deemed
significant if the proposed activity, together with all other activities
allowed after the baseline water quality is established, results in a
reduction in the water segment’s available assimilative capacity of
20% or more at the appropriate critical flow conditions for the pa-
rameters of concern.

4E.2.e. Significant degradation will be determined on a
parameter-by-parameter basis for each parameter of concern that
might be affected by the regulated activity.

4E.2.f. A proposed activity that will result in a new or
expanded discharge in a water subject to Tier 2 protection may be
allowed where the applicant agrees to implement or finance up-
stream controls of point or nonpoint sources sufficient to offset the
water quality effects of the proposed activity from the same parame-
ters and insure an improvement in water quality as a result of the
trade. The basis of the trade will be documented and will be consist-
tent with the trading assessment procedure that has been approved
by the Director. A trade may be made between more than one
stream segment where removing a discharge in one stream segment
directly results in improved water quality in another stream seg-
ment. In addition, (1) the effluent trade must be for the same pa-
rameter; (2) where uncertainty exists regarding the effluent trade, an
adequate margin of safety will be required; (3) dischargers cannot
claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trades must be enforceable.

4E.2.g. New or expanded activities determined to be significant by the agency shall be subject to the Tier 2 review requirements described in sections 4E.2. through 4E.5. herein. If the agency determines that no further Tier 2 review requirements shall apply for an activity, the activity must still achieve the highest established statutory and regulatory requirements applicable to them, or conditions of the permit, or water quality certification, and that determination must be made a part of the public notification, as provided in 4H.3.


4E.3.a. If a determination is made that significant degradation will occur, the agency shall determine whether reasonable and cost effective less-degrading or non-degrading alternatives to the proposed activity exist. The agency will evaluate any alternatives analysis submitted by the regulated activity for consistency with the requirements set forth in Subsection 4E.3.b. herein.

4E.3.b. A regulated entity proposing any new or expanded regulated activity that would significantly degrade water quality in a high quality water is required to prepare an evaluation of alternatives to the proposed activity. The evaluation must provide substantive information pertaining to the cost and environmental impacts associated with the following alternatives:

4E.3.b.1. Pollution prevention measures;
4E.3.b.2. Reduction in scale of project;
4E.3.b.3. Water recycle or reuse;
4E.3.b.4. Process changes;
4E.3.b.5. Innovative treatment technology or technologies;
4E.3.b.6. Advanced treatment technology or technologies;
4E.3.b.7. Seasonal or controlled discharge options to avoid critical water quality periods;

4E.3.b.8. Improved operation and maintenance of existing treatment systems; and

4E.3.b.9. Alternative discharge locations.

4E.3.c. After alternatives to allowing degradation have been adequately evaluated, a determination shall be made regarding whether cost-effective and reasonable non-degrading or less-degrading alternatives to the proposed activity shall be required. This determination will be based primarily on the alternatives analysis developed by the regulated entity, but may be supplemented with other information and data. As a rule of thumb, cost effective and reasonable non-degrading or less-degrading pollution control alternatives with costs that are less than 110% of the costs of the pollution control measures associated with the proposed activity shall be considered reasonable.

4E.3.d. If it is determined that reasonable and cost effective less degrading or non-degrading alternatives to the proposed activity do exist, the project design may be revised accordingly. In general, if reasonable alternative(s) exist, the alternative or combination of alternatives that provide the least amount of degradation shall be implemented up to the determined reasonable and cost-effective threshold. If the regulated entity does not agree to adopt such reasonable and cost-effective alternatives, the alternatives analysis findings will be documented and the activity will not be allowed.

4E.4. Review of social and economic importance.

4E.4.a. If significant degradation would occur, even after application of reasonable less-degrading or non-degrading alternatives, a determination shall be made as to whether the proposed activity is necessary to accommodate important economic or social development in the area in which the waters are located.

4E.4.b. The regulated activity must document the social and economic importance of the proposed activity.
4E.4.c. The factors to be addressed in such documentation may include, but are not limited to, the following:

4E.4.c.1. Employment (e.g., increasing, maintaining or avoiding a reduction in employment);

4E.4.c.2. Increased production;

4E.4.c.3. Improved community tax base;

4E.4.c.4. Housing;

4E.4.c.5. Ancillary community economic benefit; and

4E.4.c.6. Correction of an environmental or public health problem.

4E.4.d. In addition to the above, a regulated entity may be required to submit the following:

4E.4.d.1. Information pertaining to current aquatic life, recreational, or other water uses;

4E.4.d.2. Information necessary to determine the environmental impacts that may result from the proposed activity;

4E.4.d.3. Facts pertaining to the current state of economic development in the area (e.g., population, area employment, area income, major employers, types of businesses);

4E.4.d.4. Government fiscal base; and

4E.4.d.5. Land use in the areas surrounding the proposed activity.

4E.4.e. Once the available information pertaining to the socio-economic importance of the proposed activity has been reviewed by the agency, a preliminary determination regarding importance shall be made. In evaluating the regulated activity's demonstration of socio-economic importance, the agency may use EPA's Interim Economic Guidance for Water Quality Standards Workbook (EPA 823-B-95-002, March, 1995). Where there is a request for a variance from groundwater standards pursuant to 47 CSR 57 for
existing sites where activities on those sites have the potential to
impact surface water from contaminated groundwater and the activ-
ity is otherwise subject to this rule, the socio-economic justification
process required under 47 CSR 57 subdivision 6.2.i will satisfy the
requirements of this section. If the proposed activity is determined
to have social or economic importance in the area in which the af-
lected waters are located, the substance and basis for that prelimi-
ary determination shall be documented and the Tier 2 review shall
continue.

4E.5. Intergovernmental coordination for Tier 2 reviews.

4E.5.a. The intergovernmental coordination requirements
in 46 CSR 1 Section 4.1.b. will be accomplished by providing noti-
tice to those agencies listed in Appendix F-1 that the Director be-
lieves may have regulatory oversight of the regulated activity of the
preliminary determination of the socio-economic review and re-
questing comments from those agencies regarding that review.

4E.5.b. The public notice of the proposed activity will be
provided as set forth in section 4H.3. herein.

4E.5.c. Once the intergovernmental coordination and pub-
lic notice requirements are satisfied, the Director shall make a final
determination concerning the social or economic importance of the
proposed activity. All social and economic importance determina-
tions, including determinations to prohibit the activity, shall be doc-
umented and made a part of the public record.

46-1-4F. Tier 2.5 Protection Review Procedures (Wa-
ters of Special Concern).

See section 46-1-4.1.c and 46-1-2.29 for a description of
waters of special concern.

4F.1. Tier 2.5 waters.

4F.1.a. Any proposed activity that would degrade a water
segment listed in Appendix F-2 of this rule as waters of special
concern will go through the Tier 2.5 antidegradation review process.
Discharges from publicly-owned or publicly-owned and privately
operated sanitary wastewater treatment plants that expand to allevi-
ate a public health concern associated with failing septic systems or
untreated or inadequately treated sewage, shall be permissible in a
Tier 2.5 water segment where there will be a net decrease in the
overall pollutant loading discharged to the combined receiving wa-
ters:  Provided, That less degrading alternative treatment technolo-
gies are considered and used where costs for such technologies are
within budgets and rates approved for such expansion project. This
provision may extend to combined sewer overflow elimination or
reduction projects. Except as provided in 4F.1.b. of this rule, the
listing procedure for Tier 2.5 waters is set forth in section 4H.1.
herein. Currently listed Tier 2.5 waters are included in Appendix F-
2 to this rule.

4F.1.b. Initial Presumptive Listing for Tier 2.5.

4F.1.b.1. The stream or stream segments that appear on
Appendix F-3 shall be presumed to qualify as Tier 2.5 waters. Be-
fore any such stream or stream segment is protected as Tier 2.5
waters (and listed on Appendix F-2) the Director shall do the fol-
lowing:

(a) Assure compliance with all provisions of article one-a
of chapter twenty-two; and

(b) No sooner than six months and no later than twelve
months from the effective date of this rule, provide, where practica-
ble, individual notice to property owners along such stream or
stream segment. In addition, notice by publication shall be provided
to all property owners and others with a legal interest in the prop-
erty. The notice shall include at a minimum, the information set
forth in paragraphs 4H.1.a.1.a. through 4H.1.a.1.d. of this rule. The
notice shall indicate that a property owner or holder of legal interest
in the property shall have thirty days to file an objection to the in-
clusion of the stream or stream segment as a Tier 2.5 water.

4F.1.b.2. Should an objection be received from an owner
or holder of a legal interest in property adjoining any stream on
Appendix F-3, the Director shall provide written justification for the
inclusion of the stream as a Tier 2.5 stream with reference to the
criteria set out in 4H.1.a.2. of this rule. The Director shall then
provide a thirty-day comment period on the proposed action.
4F.1.b.3. Where no objection is made to the inclusion of a stream or stream segment as a Tier 2.5 water, the stream shall be included by the Director on Appendix F-2 without further justification.

4F.1.b.4. Any final decision by the Director with regard to the inclusion of a stream in Tier 2.5 made following the procedure set forth in this paragraph, may be appealed to the EQB.

4F.1.c. Following the initial listing for Tier 2.5 waters, as described in paragraph 4F.1.b. above, subsequent additions or deletions from Appendix F-2 shall be in accordance with section 4H.1., herein.

4F.2. Tier 2.5 antidegradation review.

4F.2.a. No significant degradation of Tier 2.5 waters will be allowed. For Tier 2.5 waters, degradation will be deemed significant if it exceeds the baseline water quality plus ten percent of available assimilative capacity (the difference between the baseline water quality and the water quality criteria), whether from a single activity or cumulatively, except that discharges affecting dissolved oxygen, pH, fecal coliform or temperature will be deemed insignificant provided that:

4F.2.a.1. For dissolved oxygen, the maximum DO sag will not be greater than 0.4 ppm based on an appropriate wasteload allocation model, unless that reduction is projected to cause a violation of sections 8.12 through 8.12.3 in Appendix E, Table 1 herein;

4F.2.a.2. pH is maintained within the 6.0 to 9.0 range;

4F.2.a.3. Thermal discharges will be consistent with 316(a) of the Federal Act or will not increase the temperature more than two degrees Fahrenheit at any time or cause other violations of applicable criteria in sections 8.28 through 8.28.4 in Appendix E, Table 1, herein.

4F.2.a.4. For fecal coliform, necessary and appropriate treatment (disinfection) or control is required and the fecal coliform
concentrations are established as 200/100 ml monthly average and 400/100 ml daily maximum.

4F.2.b. Where a Tier 2.5 water has one or more parameters that fail to meet water quality criteria, the Director shall use best professional judgment in setting appropriate limitations for such parameters, with the goal of improving baseline water quality for such parameters over time.

4F.2.c. Where baseline water quality has not been established for the Tier 2.5 water segment for a parameter of concern that is reasonably expected to be discharged into the water segment as a result of a new or expanded regulated activity, a determination of the baseline water quality for the receiving water segment must be established for that parameter of concern prior to allowing any new or expanded discharge.

4F.2.d. The Director may consider data for establishing the baseline water quality from a federal or state agency, the regulated entity, the public, or any other source, as long as the data are recent and reliable. The regulated entity may be required to provide baseline water quality for those parameters of concern that are reasonably expected to be discharged as a result of the regulated activity into the affected water segment.

4F.2.e. After the baseline water quality has been established for the parameters of concern reasonably expected to be discharged by the proposed activity, the de facto criteria for those parameters of concern will equal the established baseline water quality plus ten percent of available assimilative capacity.

4F.2.f. Regulated entities with discharges existing on or before the effective date of this rule that discharge into a Tier 2.5 water may be required to submit an alternatives analysis upon renewal of its application or upon the written request of the Director to evaluate reasonable and cost-effective alternatives that would reduce the activity’s impact to a Tier 2.5 water.

4F.2.g. Discharges from activities in waters upstream of a
water of special concern shall not result in the ambient water quality within the Tier 2.5 water exceeding the *de facto* criteria.

**4F.2.h.** A proposed activity that will result in a new or expanded discharge in a water subject to Tier 2.5 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Director. A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trades must be enforceable.

**4F.2.i.** If a determination is made that the activity will result in significant degradation of a Tier 2.5 water, the activity shall not be allowed.

**4F.2.j.** If the activity is determined not to result in significant degradation of a Tier 2.5 water, the activity may be allowed. In such case the antidegradation review findings will be documented in writing and public notices activities will be initiated consistent with section 4H.3. herein.

**4F.2.k.** Short-term water quality impacts. The Director shall determine whether a proposed activity is short term in nature and the resulting changes in water quality will be temporary and have limited effects. Notwithstanding sections 4F.2.a. and 4F.2.e. herein, short-term activities which result in less than a 10% change in the available assimilative capacity may be deemed to have limited effects. Determinations will be made on a case-by-case basis and shall be made after consideration of the following factors:

**4F.2.k.1.** The length of time during which the water quality will be lowered;
4F.2.k.2. The percent change in ambient concentrations;

4F.2.k.3. The parameters affected;

4F.2.k.4. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

4F.2.k.5. The degree to which achieving applicable water quality standards during the proposed activity may be at risk;

4F.2.k.6. The potential for any residual long-term influences on existing uses; and

4F.2.k.7. The cumulative impacts from all sources for the parameters affected.


4G.1. Tier 3 waters. ONRWs are to be maintained, protected and improved where necessary. Any proposed new or expanded regulated activity that would degrade (result in a lowering of water quality) a water body that has been approved as an ONRW, other than temporary lowering of water quality, is prohibited.

4G.2. Tier 3 antidegradation review. The agency shall use the following antidegradation implementation procedures for evaluating new or expanded regulated activities that have the potential to affect Outstanding National Resource Waters (ONRWs), as described in subdivision 46-1-4.1.c. and as nominated and approved in accordance with the provisions of Appendix F.

4G.2.a. Determine whether the proposed activity is short term in nature and the resulting changes in water quality will be temporary. Such determination will be made on a case-by-case basis and shall be made after consideration of the following factors:
4G.2.a.1. The length of time during which the water quality will be lowered;

4G.2.a.2. The percent change in ambient concentrations;

4G.2.a.3. The parameters affected;

4G.2.a.4. The likelihood for long-term water quality benefits to the segment (e.g., as may result from dredging of contaminated sediments);

4G.2.a.5. The degree to which achieving applicable water quality standards during the proposed activity may be at risk; and

4G.2.a.6. The potential for any residual long-term influences on existing uses.

4G.2.b. If after review of the factors in 4G.2.a.1-6, the agency determines that the proposed activity will be short term in nature and the changes in water quality will be temporary and limited, the proposed activity may be authorized. In such case the antidegradation review findings shall be documented and public notice activities shall be initiated. If after review of the factors in 4G.2.a.1 through 4G.2.a.6. the agency determines that the proposed activity will not be short term in nature or that changes in water quality will not be temporary and limited, the proposed activity shall be denied.

4G.3. Sources upstream from an ONRW. Any proposed activity that would result in a permanent new or expanded discharge upstream of an ONRW segment is prohibited except where such source would improve or not degrade the existing water quality of the downstream ONRW segment.

4G.3.a. To determine whether the proposed activity will result in the lowering of water quality in the downstream ONRW segment, the following factors, when applicable, shall be considered:

4G.3.a.1. Change in ambient concentrations predicted at the appropriate critical condition(s);
4G.3.a.2. Change in loadings (i.e., the new or expanded loadings compared to total existing loadings to the segment);

4G.3.a.3. Reduction in available assimilative capacity;

4G.3.a.4. Nature, persistence and potential effects of the parameter;

4G.3.a.5. Potential for cumulative effects;

4G.3.a.6. Degree of confidence in the various components of any modeling technique utilized (e.g., degree of confidence associated with the predicted effluent variability); and

4G.3.a.7. Other factors determined by the Director, when appropriate.

4G.3.b. If a preliminary determination is made that the applicable criteria in 4G.3.a.1. through 4G.3.a.7. will be met, the antidegradation review findings shall be documented and the applicable public notice activities shall be initiated. If after review of the factors in 4G.3.a.1. through 4G.3.a.7., the Director determines that the proposed activity will result in the lowering of water quality in the downstream ONRW stream segment, the proposed activity shall be denied.

4G.4. For ONRWs in areas designated as federal Wilderness, nothing in this rule is intended to authorize activities not authorized by the Wilderness Act.

4G.5. A proposed activity that will result in a new or expanded discharge in a water subject to Tier 3 protection may be allowed where the applicant agrees to implement or finance upstream controls of point or nonpoint sources sufficient to offset the water quality effects of the proposed activity from the same parameters and insure an improvement in water quality as a result of the trade. The basis of the trade will be documented and will be consistent with the trading assessment procedure that has been approved by the Director. A trade may be made between more than one stream segment where removing a discharge in one stream segment directly results in improved water quality in another stream segment. In addition, (1) the effluent trade must be for the same parameter; (2) where uncertainty exists regarding the effluent trade, an
adequate margin of safety will be required; (3) dischargers cannot claim offsets for water quality improvements that are required or will occur irrespective of the proposed new or expanded discharge; and (4) the trade must be enforceable.

46-1-4H. Designation of Tier 2.5 and Tier 3 waters; public participation in antidegradation reviews; appeals.

4H.1. Listing process for Tier 2.5 waters.

4H.1.a. Tier 2.5 Nomination Procedures. Any interested party or the Board may nominate a water to be listed as a Water of Special Concern. After reviewing the nomination the Board shall consider the qualification criteria and may designate the nominated water as a Tier 2.5 water in accordance with the notice and comment provisions of 46 CSR 6, Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is West Virginia Environmental Quality Board, 1615 Washington Street, East, Room 301, Charleston, West Virginia 25311-2126. The nominating party has the burden of establishing a basis for listing of a water segment as a Tier 2.5 water. The Board shall return insufficient nominations to the nominating party. Generally, nominations that fail to address at least three of the qualification criteria shall be considered insufficient.

4H.1.a.1. Upon receiving a sufficient nomination of a water or segment of a water for designation as a Tier 2.5 water pursuant to the Board's antidegradation policy, the Board shall, within 180 days of receipt of the nomination, notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. Where individual notice to property owners is impracticable, constructive notice by publication shall be provided. The written notice shall include, at a minimum:

4H.1.a.1.a. A description of the location of the waters or segment;

4H.1.a.1.b. The procedures and criteria for designation as well as the impact of the designation;
The name of the person(s) making the nomination; and

The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination, landowners, the public and localities shall be provided 60 days to comment.

Factors to be considered in determining whether to assign a Water of Special Concern designation to a water from another category shall include the following:

Impact on private property owners;

Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

The location of the water;

Any previous special designations;

Existing water quality;

Factors that indicate unique or exceptional ecological, recreational or aesthetic resource value;

Impact on economic development in the area, including development of demonstrated natural resources; and

Other factors determined by the Board, when applicable.

The Board may on its own, or at the request of an interested party, consider reclassifying a Water of Special Concern to another antidegradation tier. In considering a reclassification, the Board shall review the criteria outlined in subparagraphs 4H.1.a.2.a. through 4H.1.a.2.h. above. After such consideration, the Board may reclassify a Tier 2.5 water in accordance with the notice and com-
4H.2. Listing process for Tier 3 waters.

4H.2.a. Tier 3 Nomination Procedures. Any interested party or the Board may nominate a water as an ONRW. After reviewing the nomination the Board shall consider the qualification criteria and may classify the nominated water as a Tier 3 water in accordance with the notice and comment provisions of 46 CSR 6, Procedural Rules Governing Site Specific Revisions to Water Quality Standards. The address for filing such petitions is West Virginia Environmental Quality Board, 1615 Washington Street, East, Room 301, Charleston, West Virginia 25311-2126. The nominating party has the burden of establishing a basis for listing of a water segment as a Tier 3 water. The Board shall return insufficient nominations to the nominating party. Generally, nominations that fail to address at least three of the qualification criteria set out in paragraph 4H.2.a.2. of this rule shall be considered insufficient.

4H.2.a.1. Upon receiving a sufficient nomination of a water or segment of a water for designation as a Tier 3 water pursuant to the Board’s antidegradation policy, the Board shall notify each locality in which the water or segment lies and shall provide individual notice to property owners on the nominated segment. Where individual notice to property owners is impracticable, constructive notice by publication shall be provided. The written notice shall include, at a minimum:

4H.2.a.1.a. A description of the location of the waters or segment;

4H.2.a.1.b. The procedures and criteria for designation as well as the impact of the designation;

4H.2.a.1.c. The name of the person(s) making the nomination; and

4H.2.a.1.d. The name of a contact person at the Environmental Quality Board who is knowledgeable about the nomination of the waters or segment. After receipt of the notice of the nomination...
4H.2.a.2. Qualification Criteria. Factors to be considered in determining whether to assign an ONRW designation to a water from another category shall include the following:

4H.2.a.2.a. Impact on private property owners;

4H.2.a.2.b. Whether the interests of all affected parties have been adequately represented during the nomination and designation process;

4H.2.a.2.c. The location of the water;

4H.2.a.2.d. Any previous special designations;

4H.2.a.2.e. Existing water quality;

4H.2.a.2.f. Outstanding ecological value;

4H.2.a.2.g. Outstanding recreational or aesthetic value;

and

4H.2.a.2.h. Other factors determined by the Board, when applicable.

4H.3. Public participation in antidegradation reviews.

4H.3.a. All antidegradation review findings shall be documented by the Director and made part of the public record. The findings, including the baseline water quality, the existing uses, and the tier assigned to the water body are to be available to the public.

4H.3.b. Any required public notice will be provided through the appropriate Class I or Class II legal advertisement in a qualified newspaper with the largest circulation for the county where the activity will occur. The notice will identify the action being considered, list all existing uses identified of the water, and call for comments from the public regarding the proposed activity. The cost of such publication will be borne by the applicant.
4H.3.c. Public notice, opportunity for public comment, and opportunity for a public hearing, consistent with the requirements of 47 CSR 10 section 12, will be provided of all activities proposed to be allowed after a Tier 1, 2, 2.5, or 3 antidegradation review. Such public notice may be combined with other required notifications, such as notification to agencies as part of required intergovernmental coordination or notification of a proposed permit decision.

4H.3.d. Public notice is not required to be provided for proposed activities on Tier 1 or Tier 2 waters for which a review process has not been required, such as activities covered by a WV/NPDES general permit, except that any trading approved by the Director for antidegradation purposes will require public notice consistent with the requirements of 47 CSR 10-12.

4H.3.e. Public notice of Tier 2 antidegradation reviews. After a full Tier 2 review has been completed for a proposed activity, the public notice shall include notice of the availability of the following:

4H.3.e.1. The decision as to whether the proposed activity has been determined to comply with the antidegradation implementation rule;

4H.3.e.2. Findings from the alternatives analysis;

4H.3.e.3. A determination of the impact of the activity to ambient concentrations and baseline water quality;

4H.3.e.4. The results of the socio-economic evaluation of the activity;

4H.3.e.5. The determination regarding existence of reasonable and cost effective non-degrading or less degrading alternatives; and

4H.3.e.6. A description of the water segment that is subject to the antidegradation review.

4H.3.f. Once the intergovernmental coordination and public notice requirements of Subpart 4H.3. are satisfied, the Director shall make a determination concerning the social or economic im-
portance in the area in which the affected water bodies are located. All determinations, including determinations to prohibit the activity, shall be documented and made a part of the public record.

4H.4. Appeals.

4H.4.a. Final agency decisions, made after public comment, that identify applicable uses, designate tiers, or that find regulated activities to be allowed or prohibited, are final actions that are appealable as set forth in the Administrative Procedures Act. Final agency actions made by the Director are appealable to the Board.
ANTIDEGRADATION IMPLEMENTATION PROCEDURES

INTERGOVERNMENTAL COORDINATION AGENCIES

STATE AGENCIES

Bureau of Commerce
- Division of Natural Resources
- Division of Forestry
- Development Office

Department of Health and Human Resources
- Bureau for Public Health

Bureau of the Environment
- Division of Environmental Protection - all offices

Department of Agriculture
- Soil Conservation Agency

Department of Transportation
- Division of Highways

FEDERAL AGENCIES

US Environmental Protection Agency, Region III
US Fish and Wildlife Service
US Army Corps of Engineers
US Forest Service
US Office of Surface Mining
WV DNR and WV DEP - Waters of Special Concern

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## Initial Presumptive Listing for Tier 2.5

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<td>PETERS RUN</td>
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§64-3-3. Solid waste management board.

(a) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section twenty-three, article four, chapter twenty-two-c, of this code, relating to the solid waste management board (developing, updating and amending of comprehensive litter and solid waste control plans, 54 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section twenty-three, article four, chapter twenty-two-c, of this code, relating to the solid waste management board (development of commercial and solid waste facility siting plans, 54 CSR 4), is authorized.

CHAPTER 184

(Com. Sub. for H. B. 2660 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

[Passed April 10, 2001; in effect from passage. Approved by the Governor.]
thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of culture and history to promulgate a legislative rule relating to cultural facilities and capital resources grant program; and authorizing the division of culture and history to promulgate a legislative rule relating to records preservation grant program for political subdivisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Division of culture and history.

1   (a) The legislative rule filed in the state register on the sixteenth day of June, two thousand, authorized under the authority of section three, article one, chapter twenty-nine of
this code, modified by the division of culture and history to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-
eighth day of August, two thousand, relating to the division
of culture and history (cultural facilities and capital resources
grant program, 82 CSR 7), is authorized.

(b) The legislative rule filed in the state register on the
thirtieth day of August, two thousand, authorized under the
authority of section six, article one, chapter twenty-nine of
this code, modified by the division of culture and history to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-sixth
day of October, two thousand, relating to the division of cul-
ture and history (records preservation grant program for po-
litical subdivisions, 82 CSR 8), is authorized.

CHAPTER 185

(Com. Sub. for S. B. 295 — Senators Ross,
Anderson, Minard, Snyder, Unger and Minear)

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

AN ACT to amend and reenact article five, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, relating generally to the promulgation of admin-
istrative rules by the various executive or administrative
agencies and the procedures relating thereto; continuing rules
previously promulgated by state agencies and boards; legisla-
tive mandate or authorization for the promulgation of certain
legislative rules; authorizing certain of the agencies to pro-
mulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of health to promulgate a legislative rule relating to public water systems operators; authorizing the division of health to promulgate a legislative rule relating to nursing home licensure; authorizing the division of health to promulgate a legislative rule relating to radiological health; authorizing the division of health to promulgate a legislative rule relating to newborn hearing screening; authorizing the division of health to promulgate a legislative rule relating to specialized multi-patient medical transport; authorizing the division of health to promulgate a legislative rule relating to needlestick injury prevention; authorizing the division of human services to promulgate a legislative rule relating to child placing agencies licensure; authorizing the support enforcement commission to promulgate a legislative rule relating to obtaining support from federal and state income tax refunds; authorizing the support enforcement commission to promulgate a legislative rule relating to interstate income withholding; and authorizing the support enforcement commission to promulgate a legislative rule relating to the termination of income withholding.

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

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

§64-5-1. State board of health; division of health.
§64-5-2. Division of human services.

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

(a) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, two thousand one, relating to the division of health (public water systems operators, 64 CSR 4), is authorized with the following amendments:

"On page 3, after subdivision 4.1.b. by adding a new subdivision 4.1.c. to read as follows:

4.1.c. Community and nontransient noncommunity public water systems classified as 1D systems on or before the effective date of this rule will remain classified as 1D systems until July 1, 2004, unless treatment modifications do not require a higher classification;

On page 5, in subdivision 5.3.d. after the words "employed by a" by adding the words "community or nontransient noncommunity";"
On page 6, after subsection 7.2 by adding a new section 7.3 to read as follows:

7.3. Any operator holding Class 1D certification employed on or before the effective date of this rule by a community or nontransient noncommunity public water system who meets the minimum education requirements or substitutes applicable experience on a year-for-year basis to meet the minimum educational requirements may upgrade to a Class 1 certification by passing the certification examination on or before July 1, 2004;

On page 8, subdivision 10.2.b. after the words "shall complete" by striking out the words "twenty-four (24)" and inserting in lieu thereof the word "required";

On page 8, subdivision 10.2.b. after the words "certification period" by adding a new sentence to read as follows:

"Class 1 operators are required to complete twelve (12) continuing education hours and Class 11 and higher classifications must complete twenty-four (24) continuing education hours."

And,

On page 14, in the note at the end of the chart after the word "for" by striking out the words "Class I" and inserting in lieu thereof the words "Class II".

(b) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section five, article five-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, two thousand one, relating to the division of health (nursing
home licensure, 64 CSR 13), is authorized with the following amendments:

"On page 14 of the rule, subdivision 3.10.a., following the word 'The' by striking the words 'nursing home' and inserting in lieu thereof the word "director."

And,

On page 82 of the rule, subdivision 15.3.c., by following the words "been sited, the" by striking the words "nursing home" and inserting in lieu thereof the word "director.".

(c) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section four, article one, chapter sixteen of this code, relating to the division of health (radiological health, 64 CSR 23), is authorized.

(d) The legislative rule filed in the state register on the seventh day of June, two thousand, authorized under the authority of section two, article twenty-two-a, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of August, two thousand, relating to the division of health (newborn hearing screening, 64 CSR 24), is authorized.

(e) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section twenty-three, article four-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, two thousand, relating to the division of health (specialized multi-patient medical transport, 64 CSR 29), is authorized.
(f) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section four, article thirty-seven, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, two thousand, relating to the division of health (body piercing studio business, 64 CSR 80), is authorized.

(g) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, authorized under the authority of section two, article thirty-six, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, two thousand, relating to the division of health (needlestick injury prevention, 64 CSR 82), is authorized with the following amendments:

"On page 3, subdivision 4.1.d. after the colon by adding the words 'Provided, That the requirements of the Occupational Exposure to Bloodborne Pathogens; Needlesticks and Other Sharps Injuries; Final Rule, 29 CFR Part 1910, www.osha-slc.gov/needlesticks/index.html, attached hereto as Appendix 1 are met.';"

On page 6, subsection 6.2 after the word 'Health' by striking out the word 'and';

On page 6, subsection 6.2 after the word 'Affairs' by adding the words 'and product usage experience of hospitals.';

On page 8, section 10, before the word 'Sharps' by adding the numbers '10.1.';

And,
On page 8, section 10, at the end of the newly numbered subsection 10.1 by adding a new subsection 10.2 to read as follows:

10.2. The division of health, shall as part of its review of sharps injury logs determine whether injuries have occurred due to a lack of sharps containers. The division will report any noncompliance with the sharps containers requirement to the Office of Health Facilities Certification and Licensure.”

§64-5-2. Division of human services.

The legislative rule filed in the state register on the thirtieth day of August, two thousand, under the authority of section two, article two-b, chapter forty-nine of this code, modified by the division of human services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of February, two thousand one, relating to the division of human resources (child placing agencies licensure, 78 CSR 2), is authorized with the following amendments:

‘On page 2, subsection 3.20. after the words “or the” by striking out the words “Department of Military Affairs and Public Safety” and inserting in lieu thereof the words “Division of Juvenile Services”;

On page 10, paragraph 6.6.a.1. after the word “race” by striking out the word “religion” and inserting in lieu thereof the words “biological family’s religious preference, if any”; 

On page 22, section heading 9.5. by striking out the word “Religion” and inserting in lieu thereof the words “Religious preferences”;

On page 23, subsection 9.5.a. after “orientation” by adding the words “if any,”;
On page 23, subsection 9.5.b. after the word “religious” by striking out the word “practices” and inserting in lieu thereof the words “preferences, if any,”;

On page 23, subsection 9.5.c. after the word “child” by adding a comma and the words “if any” and a comma;

On page 23, subsection 9.5.c. after the word “choice” by adding the words “if he or she expresses one”; and,

On page 27, by striking paragraph 10.5.f.4. and renumbering the remaining paragraphs; and,

On page 27, paragraph 10.5.f.5., re-numbered as paragraph 10.5.f.4., after the words “special interests”, by inserting the words “religious preferences if any”; and,

On page 33, subdivision 12.2.n. after the word “Code” by striking out the numbers and words “49-4-1 et seq.” and inserting in lieu thereof the numbers and words “48-4-1 et seq.”;

On page 33, section heading 13.1. by striking out the words “Character and Personal Requirements.” and inserting in lieu thereof the words “Personal Characteristics.”;

On page 33, subsection 13.1.a. by striking out the period and adding the words “and shall provide verification of marital status, if applicable, upon request.”;

On page 33, subsection 13.1.d. by striking out the words “that includes his or her” and inserting in lieu thereof the words “in his or her own words which may include”;

On page 33, paragraph 13.1.d.4. after the word “beliefs” by adding a comma and the words “if any” and a comma;
On page 33, paragraph 13.1.d.5. by striking out the paragraph in its entirety and renumbering the remaining paragraphs;

On page 34, subsection 13.3. by striking out the subsection in its entirety and renumbering the remaining subsections;

On page 35, subdivision 13.7.c., re-numbered as subdivision 13.6.c., after the words “household member has any”, by striking out the words “arrests or”; and,

And,

On page 42, subdivision 22.1.a. after the word “Code” by striking out the numbers and words “§49-4-1 et seq. and §49-4A-1 et seq.” and inserting in lieu thereof the numbers and words “§48-4-1 et seq. and §48-4A-1 et seq.”


(a) The legislative rule 97 CSR 3 heretofore authorized under section nine, article two, chapter forty-eight-a of this code relating to obtaining support from federal and state income tax refunds by the support enforcement commission, is hereby repealed.

(b) The legislative rule 97 CSR 4 heretofore authorized under section nine, article two, chapter forty-eight-a of this code relating to obtaining support from federal and state income tax refunds by the support enforcement commission, is hereby repealed.

(c) The legislative rule filed 97 CSR 11 heretofore authorized under section nine, article two, chapter forty-eight-a of this code relating to obtaining support from federal and state income tax refunds by the support enforcement commission, is hereby repealed.
AN ACT to amend and reenact article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the division of corrections to promulgate a legislative rule relating to parole supervision; and authorizing the division of corrections to promulgate a legislative rule relating to electronic monitoring of offenders.

Be it enacted by the Legislature of West Virginia:
That article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

§64-6-1. Division of corrections.

1 (a) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section two, article thirteen, chapter sixty-two of this code, modified by the division of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, two thousand, relating to the division of corrections (parole supervision, 90 CSR 2 ), is authorized.

9 (b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section fourteen, article one, chapter twenty-five of this code, modified by the division of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, two thousand, relating to the division of corrections (electronic monitoring of offenders, 90 CSR 8), is authorized.

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**CHAPTER 187**

(Com. Sub. for H. B. 2717 — By Delegates Mahan, Wills, Cann, Kominar, Faircloth and Riggs)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the tax commissioner to promulgate a legislative rule relating to the valuation of public utility property for ad valorem property tax purposes; authorizing the tax commissioner to promulgate a legislative rule relating to the valuation of the percentage of completion of improvements and infrastructure development in a recorded plan or plat; authorizing the tax commissioner to promulgate a legislative rule relating to bingo; authorizing the tax commissioner to promulgate a legislative rule relating to the cigarette excise tax; authorizing the tax commissioner to promulgate a legislative rule relating to charitable raffles; authorizing the insurance commissioner to promulgate a legislative rule relating to the exchange of information agreement between the state tax division and the alcohol beverage control commission; authorizing the insurance commissioner to promulgate a legislative rule relating to standards for uniform health care administration; authorizing the insurance commissioner to promulgate a legislative rule relating to examiners' compensation, qualifications and classification; authorizing the insurance commissioner to
promulgate a legislative rule relating to medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to continuing education for insurance agents; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to the licensing of retail liquor stores; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to cigarettes produced for export and imported cigarettes; authorizing the alcohol beverage control commissioner to promulgate a legislative rule relating to prohibiting the sale of tobacco products in vending machines; authorizing the commissioner of banking to promulgate a legislative rule relating to the legal lending limit; and authorizing the racing commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. AUTHORITY FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Tax commissioner.
§64-7-2. Insurance commissioner.
§64-7-3. Alcohol beverage control commissioner.
§64-7-4. Banking commissioner.
§64-7-5. Racing commission.

§64-7-1. Tax commissioner.

1 (a) The legislative rule filed in the state register on the eleventh day of July, two thousand, under the authority of section five, article one-c, chapter eleven of this code, relating to the tax commissioner (valuation of public utility prop-
(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand, under the authority of section one-b, article three, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, two thousand, relating to the tax commissioner (valuation of percentage of completion of improvements and infrastructure development in a recorded plan or plat, 110 CSR 4), is authorized.

(c) The legislative rule filed in the state register on the thirty-first day of August, two thousand, under the authority of section twenty-three, article twenty, chapter forty-seven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, two thousand, relating to the tax commissioner (bingo, 110 CSR 16), is authorized.

(d) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand, under the authority of section five, article ten, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, two thousand, relating to the tax commissioner (cigarette excise tax, 110 CSR 17), is authorized.

(e) The legislative rule filed in the state register on the thirty-first day of August, two thousand, under the authority of section twenty-one, article twenty, chapter forty-seven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of Oc-
38 tober, two thousand, relating to the tax commissioner (charitable raffles, 110 CSR 37), is authorized.

40 (f) The legislative rule filed in the state register on the eighteenth day of August, two thousand, under the authority of section five, article ten, chapter eleven of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, two thousand, relating to the tax commissioner (exchange of information agreement between the state tax division and the alcohol beverage control commission, 110 CSR 50B), is authorized.

§64-7-2. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the first day of October, two thousand, authorized by section three, article fifteen-b, chapter thirty-three of this code, relating to the insurance commissioner (standards for uniform health care administration, 114 CSR 16), is authorized.

6 (b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, two thousand, relating to the insurance commissioner (examiners’ compensation, qualifications and classification, 114 CSR 15), is authorized.

15 (c) The legislative rule filed in the state register on the first day of September, two thousand, authorized by section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, two thou-
sand, relating to the insurance commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.

(d) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, two thousand, relating to the insurance commissioner (AIDS, 114 CSR 27), is authorized with the following amendment:

"On page six of the rule, subsection 5.9, by striking subdivision 5.9 in its entirety and inserting in lieu thereof, the following:

'S.9. The testing is required to be administered on a non-discriminatory basis for all individuals in the same underwriting class. No proposed insured may be denied coverage or rated a substandard risk on the basis of HIV testing unless acceptable testing protocol is followed. The insurer may at its option use a urine HIV test as an initial screening device; provided that if the urine test yields a negative result for the purpose of HIV antibodies then HIV blood or OMT testing may be required by the insurer. The proposed insured may not be denied insurance coverage or rated a substandard risk on the basis of a positive urine HIV test alone, including the use of FDA-licensed tests. An applicant may not be denied coverage on the basis of AIDS related testing unless:

a. An initial enzyme linked immunosorbent assay (ELISA) test is administered to the proposed insured, and it indicates the presence of HIV antibodies,

b. The initially reactive specimen is retested by ELISA in duplicate and at least one of the repeat tests is reactive. The
specimen considered repeatedly reactive, is examined in a Western blot test to confirm the ELISA test results; and

c. A Western blot test is positive."

If an initial ELISA test is negative, or both repeat-duplicate tests are negative, the testing ceases and the proposed insured cannot be denied coverage based on AIDS-related testing. If the initial and at least one of the repeat-duplicate ELISA tests is positive but the Western blot test is negative, for purposes of insurability, the results are negative.

(e) The legislative rule filed in the state register on the first day of September, two thousand, authorized by section ten, article two, chapter thirty-three of this code, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, two thousand, relating to the insurance commissioner (continuing education for insurance agents, 114 CSR 42), is authorized.

§64-7-3. Alcohol beverage control commissioner.

(a) The legislative rule filed in the state register on the twenty-second day of February, two thousand, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of January, two thousand one, relating to the alcohol beverage control commissioner (licensing of retail liquor stores, 175 CSR 5), is authorized.

(b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section five, article nine, chapter sixty of this code, modified by the alcohol beverage control commissioner
to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, two thousand one, relating to the alcohol beverage control commissioner (cigarettes produced for export; imported cigarettes, 175 CSR 8), is authorized.

(c) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section eight, article nine-a, chapter sixteen of this code, modified by the alcohol beverage control commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, two thousand one, relating to the alcohol beverage control commissioner (prohibiting the sale of tobacco products in vending machines, 175 CSR 9), is authorized.

§64-7-4. Banking commissioner.

The legislative rule filed in the state register on the thirtieth day of August, two thousand, under the authority of section twenty-six, article four, chapter thirty-one-a of this code, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, two thousand, relating to the commissioner of banking (legal lending limit, 106 CSR 9), is authorized.

§64-7-5. Racing commission.

The legislative rule filed in the state register on the twenty-second day of August, two thousand, under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, two thousand, relating to the racing commission
8 (thoroughbred racing, 178 CSR 1), is authorized, with the
9 amendment set forth below:

10 On page one, section 178-1-2, beginning on line eleven,
11 by striking out section 178-1-2.1 in its entirety and inserting
12 in lieu thereof a new section 178-1-2.1 as follows:

13 “2.1. “Accredited thoroughbred horse” means a horse
14 that is:

15 2.1.1. foaled in West Virginia; or

16 2.1.2. sired by an accredited West Virginia sire.”.

17 And,

18 On page thirty-one, section 178-1-31.2, line twenty-one,
19 following the words “Racing Commission” and the period,
20 by striking out the words “All moneys won by a horse shall
21 be forfeited and redistributed when the horse is administrated
22 to as described in this section”, and inserting in lieu thereof
23 the words “All moneys won by a horse found to have been
24 administered to as described in this section shall be forfeited
25 and redistributed.”.

CHAPTER 188

(Com. Sub. for H. B. 2685 — By Delegates Mahan,
Wills, Cann, Kominar, Faircloth and Riggs)

[Passed April 12, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the aeronautics commission to promulgate a legislative rule relating to matters pertaining to aeronautics in the state of West Virginia; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the division of highways to promulgate a legislative rule relating to the use of state road rights-of-way and areas adjacent thereto; authorizing the division of highways to promulgate a legislative rule relating to waste tire remediation/environmental clean-up; authorizing the division of motor vehicles to promulgate a legislative rule relating to the examination and issuance of driver's licenses; authorizing the division of motor vehicles to promulgate a legislative rule relating to the denial, suspension, revocation or nonrenewal of driving privileges; and authorizing the division of motor vehicles to promulgate a legislative rule relating to motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Aeronautics commission.

§64-8-2. Division of highways.

§64-8-3. Division of motor vehicles.

§64-8-1. Aeronautics commission.

The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section three, article two-a, chapter twenty-nine of this code, relating to the aeronautics commission (matters pertaining to aeronautics in the state of West Virginia, 171 CSR 1), is authorized.

§64-8-2. Division of highways.

(a) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand, under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the division of highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.

(b) The legislative rule filed in the state register on the twenty-third day of August, two thousand, authorized under the authority of section eight, article two-a, chapter seventeen of this code, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand, relating to the division of highways (use of state road
rights-of-way and areas adjacent thereto, 157 CSR 6), is authorized, with the following amendment:

On page 10, subsection 3.8 after the words “Right of Way” by adding the words “dated July 1, 1995, and made a part of this rule”.

(c) The legislative rule filed in the state register on the eighteenth day of August, two thousand, authorized under the authority of section four, article twenty-four, chapter seventeen of this code, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand, relating to the division of highways (waste tire remediation/environmental clean-up, 157 CSR 8), is authorized.

§64-8-3. Division of motor vehicles.

(a) The legislative rule filed in the state register on the twenty-first day of August, two thousand, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of September, two thousand, relating to the division of motor vehicles (examination and issuance of driver’s licenses, 91 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of November, two thousand, relating to the division of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges, 91 CSR 5), is authorized.
(c) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of September, two thousand, relating to the division of motor vehicles (motor vehicle dealers, wrecker/dismantler/rebuilders and license services, automobile auctions, vehicle leasing companies, daily passenger rental car businesses and administrative due process, 91 CSR 6), is authorized.

CHAPTER 189

(Com. Sub. for S. B. 299 — By Senators Ross, Anderson, Minard, Snyder, Unger and Minear)

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

AN ACT to amend and reenact article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies and boards; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of
the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disallowing and not authorizing the board of acupuncturists to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing commissioner of agriculture to promulgate a legislative rule relating to traditional cheese production; authorizing commissioner of agriculture to promulgate a legislative rule relating to sale and distribution of commercial fertilizer; authorizing commissioner of agriculture to promulgate a legislative rule relating to fee structure for pesticide control act of 1990; authorizing board of architects to promulgate a legislative rule relating to registration of architects; authorizing board of architects to promulgate a legislative rule relating to fees for registration of architects; authorizing the auditor to promulgate a legislative rule relating to the state auditor's computer and technology program; authorizing auditor to promulgate a legislative rule relating to transaction fee and rate structure; authorizing board of barbers and cosmetologists to promulgate a legislative rule relating to continuing competence; authorizing board of examiners in counseling to promulgate a legislative rule relating to licensing; authorizing board of examiners in counseling to promulgate a legislative rule relating to fees; authorizing board of examiners in counseling to promulgate a legislative rule relating to licensing renewal and continuing professional education requirements; authorizing board of examiners in counseling to promulgate a legislative rule relating to restricted practice licensure for addictions counselors; authorizing board of dental examiners to promulgate a legislative rule relating to fees established by board; authorizing board of licensed dietitians to promulgate a legislative rule relating to continuing professional education requirements; authorizing board of licensed dietitians to promulgate a legislative rule relating to licensure and renewal requirements; authorizing board of licensed dietitians to promulgate a
legislative rule relating to code of professional ethics; authorizing board of embalmers and funeral home directors to promulgate a legislative rule relating to general provisions; authorizing board of registration for professional engineers to promulgate a legislative rule relating to rules of board; authorizing governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to protocol for law-enforcement response to domestic violence; authorizing board of hearing aid dealers to promulgate a legislative rule relating to board; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to development of educational programs in practical nursing; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to policies regulating licensure of practical nurses; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to legal standards of nursing practice for licensed practical nurses; authorizing board of examiners for licensed practical nurses to promulgate a legislative rule relating to continuing competence; authorizing board of medicine to promulgate a legislative rule relating to licensing, disciplinary and complaint procedures for physicians and podiatrists; authorizing board of medicine to promulgate a legislative rule relating to licensure, disciplinary and complaint procedures for physician assistants; authorizing board of optometry to promulgate a legislative rule relating to board; authorizing board of osteopathy to promulgate a legislative rule relating to licensing procedures for osteopathic physicians; authorizing board of pharmacy to promulgate a legislative rule relating to rules of board for uniform controlled substances act; authorizing radiologic technology board of examiners to promulgate a legislative rule relating to board; authorizing board of examiners for registered professional nurses to promulgate a legislative rule relating to disciplinary action;
authorizing secretary of state to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing board of examiners to promulgate a legislative rule for speech-language pathologists and audiologists; and authorizing board of veterinary medicine to promulgate a legislative rule relating to schedule of fees.

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

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

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

§64-9-1. Board of acupuncturists.
§64-9-5. Board of barbers and cosmetologists.
§64-9-6. Board of examiners in counseling.
§64-9-8. Board of licensed dietitians.
§64-9-10. Board of registration for professional engineers.
§64-9-11. Governor's committee on crime, delinquency and correction.
§64-9-14. Board of medicine.
§64-9-16. Board of osteopathy.
§64-9-17. Board of pharmacy.
§64-9-20. Secretary of state.
§64-9-22. Board of veterinary medicine.

§64-9-1. Board of acupuncturists.
The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board to meet the objections of the legislative rule-making review committee, refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, and effective the twenty-first day of May, one thousand nine hundred ninety-nine, relating to board of acupuncturists (disciplinary and complaint procedures, 32 CSR 7), is disapproved and not authorized.


(a) The legislative rule filed in the state register on the twenty-seventh day of December, one thousand nine hundred ninety-nine, authorized under the authority of section three, article eleven-d, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of May, two thousand, relating to the commissioner of agriculture (traditional cheese production, 61 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the fourth day of August, two thousand, authorized under the authority of section twelve, article fifteen, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of October, two thousand, relating to the commissioner of agriculture (sale and distribution of commercial fertilizer, 61 CSR 6), is authorized.

(c) The legislative rule filed in the state register on the eighth day of August, two thousand, authorized under the authority of section four, article sixteen-a, chapter nineteen of
this code, modified by the commissioner of agriculture to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the fifteenth day of Septem-
ber, two thousand, relating to the commissioner of agriculture
(fee structure for the pesticide control act of 1990, 61 CSR 12),
is authorized.


(a) The legislative rule filed in the state register on the
thirty-first day of August, two thousand, under the authority of
section one, article twelve, chapter thirty of this code, modified
by the board of architects to meet the objections of the legisla-
tive rule-making review committee and refiled in the state
register on the twelfth day of December, two thousand, relating
to the board of architects (registration of architects, 2 CSR 1),
is authorized.

(b) The legislative rule filed in the state register on the
thirty-first day of August, two thousand, under the authority of
section three, article twelve, chapter thirty of this code, modi-
fied by the board of architects to meet the objections of the
legislative rule-making review committee and refiled in the
state register on the twelfth day of December, two thousand,
relating to the board of architects (fees for the registration of
architects, 2 CSR 3), is authorized.


(a) The legislative rule filed in the state register on the tenth
day of August, two thousand, authorized under the authority of
section ten-c, article three, chapter twelve, of this code, relating
to the auditor (transaction fee and rate structure, 155 CSR 4), is
authorized with the following amendments:

On page 1, section 155-4-3, beginning on line 7 of subsec-
tion 155-4-3.2, following the word "transaction" and the period,
by inserting the following: "The fee shall continue in effect until December 31, 2002."

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-nine, under the authority of section two, article four-a, chapter twelve of this code, modified by the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of February, two thousand, relating to the department of administration and the auditor (state auditor's computer and technology donation program, 155 CSR 5), is authorized.

§64-9-5. Board of barbers and cosmetologists.

The legislative rule filed in the state register on the thirteenth day of June, two thousand, authorized under the authority of section one, article twenty-seven, chapter thirty of this code, modified by the board of barbers and cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of November, two thousand, relating to the board of barbers and cosmetologists (continuing competence, 3 CSR 8), is disapproved.

§64-9-6. Board of examiners in counseling.

(a) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand, under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, two thousand, relating to the board of examiners in counseling (licensing, 27 CSR 1), is authorized.
(b) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand, under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, two thousand, relating to the board of examiners in counseling (fees, 27 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand, under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, two thousand, relating to the board of examiners in counseling (licensing renewal and continuing professional education requirements, 27 CSR 3), is authorized.

(d) The legislative rule filed in the state register on the twenty-eighth day of August, two thousand, under the authority of section seven-a, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, two thousand, relating to the board of examiners in counseling (restricted practice licensure for addictions counselors, 27 CSR 4), is authorized.


The legislative rule filed in the state register on the twenty-sixth day of June, two thousand, authorized under the authority of section six, article one, chapter thirty of this code, relating to the board of dental examiners (fees established by the board, 5 CSR 3), is authorized,
By striking the rule in its entirety and inserting in lieu thereof, the following:

§5-3-1. General.
1.1 Scope- This legislative rule establishes fees for the Board of Dental Examiners.
1.2 Authority: §30-1-6 and §30-4-4a
1.3 Filing date-
1.4 Effective Date-

§5-3-2. Schedule of fees for Dentists.
2.1 Dental Licensure Application $50.00
2.2 Out of State Dentist - Dental Licensure Application $100.00
2.3 Temporary Permit $100.00
2.4 Dental Intern/Dental Residency Permit $50.00
2.5 Teaching Permit $100.00
2.6 Investigation of Qualification for Temporary, Dental Intern/Dental Residency or Teaching Permits $50.00
2.7 Annual Information & Renewal fee for a Dentist $125.00

§5-3-3. Schedule of fees for Hygienists.
3.1 Dental Hygiene Licensure Application $35.00
3.2 Re-examination fee for Dental Hygienist $10.00
3.3 Out of State Dental Hygienist - Dental Hygienist Licensure Application $50.00
3.4 Temporary Permit $100.00
3.5 Teaching Permit $100.00
3.6 Investigation of Qualification for Temporary, Dental Intern/Dental Residency or Teaching Permits $50.00
3.7 Annual Information & Renewal fee
for a Dental Hygienist $50.00

§5-3-4. Schedules of fees for Dental Corporations.

4.1 Application to form a Dental Corporation. $200.00

4.2 Annual Registration fee for a Dental Corporation $150.00

§5-3-5. Schedule of fees for Specialty Licensure for Dentists.

5.1. Dental Specialty Licensure Application $300.00

§5-3-6. Schedule for Miscellaneous fees.

6.2 Verification Of Licensure to another State $10.00

§64-9-8. Board of licensed dietitians.

(a) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, two thousand, relating to the board of licensed dietitians (continuing professional education requirements, 31 CSR 5), is authorized.

(b) The legislative rule filed in the state register on the twenty-ninth day of August, two thousand, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, two thousand, relating to the board of licensed dietitians (licensure and renewal requirements, 31 CSR 1), is authorized.
(c) The legislative rule filed in the state register on the seventh day of August, two thousand, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of licensed dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, two thousand, relating to the board of licensed dietitians (code of professional ethics, 31 CSR 2), is authorized.


The legislative rule filed in the state register on the eighteenth day of August, two thousand, under the authority of section three, article six, chapter thirty of this code, modified by the board of embalmers and funeral home directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of February, two thousand one, relating to the board of embalmers and funeral home directors (general provisions, 6 CSR 1), is authorized,

"On page two of the rule, section 2.13, following the word 'casket,' by inserting the word 'and';"

"On page ten of the rule, section 16.1, following the words 'The applicant is not', by striking the word 'be';"

"On page ten of the rule, section 16.3, following the words 'payment of a fee of $25.00 for each re-issuance', by striking out the remainder of the sentence and inserting in lieu thereof a period;"

"On page ten of the rule, subsection 16.4.2, following the words 'fault for the missed appointment' by striking out the word 'or' and inserting in lieu thereof a period and the words 'No fee will be charged'; and in two places in the subsection, following the word 'his' by inserting the words 'or her'."
23 And,

24 On page eleven of the rule, subsection 18.3, following the words ‘one such program’ by inserting the words ‘or other approved program’.

§64-9-10. Board of registration for professional engineers.

1 The legislative rule filed in the state register on the thirtieth day of August, two thousand, under the authority of section nine, article thirteen, chapter thirty of this code, modified by the board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand, relating to the board of registration for professional engineers (rules of the board, 7 CSR 1), is authorized, with the following amendment:

10 On page ten of the rule, after the words ‘services in this State’, by striking out subsection 4.2 in its entirety;

12 On page nineteen of the rule, after the stricken words ‘the first time’, by striking the words ‘will be granted a request’ and inserting in lieu thereof the word ‘requests’;

15 On page twenty-seven of the rule, subdivision 14.2.b, after the stricken words ‘Successful completion of’, by inserting the words ‘Evidence of completion of’; and,

18 On page thirty-seven of the rule, after the words ‘W. Va. Code §47B-3-6 and §31B-13-1305’, by striking out subsection 16.8 in its entirety.

§64-9-11. Governor’s committee on crime, delinquency and correction.
(a) The legislative rule filed in the state register on the first
day of September, two thousand, authorized under the authority
of section three, article twenty-nine, chapter thirty of this code,
relating to the governor’s committee on crime, delinquency and
correction (law-enforcement training standards, 149 CSR 2), is
authorized.

(b) The legislative rule filed in the state register on the
sixteenth day of August, two thousand, authorized under the
authority of section nine, article two-a, chapter forty-eight of
this code, relating to the governor’s committee on crime,
delinquency and correction (protocol for law-enforcement
response to domestic violence, 149 CSR 3), is authorized.


The legislative rule filed in the state register on the twenty-
eighth day of August, two thousand, under the authority of
section three, article twenty-six, chapter thirty of this code,
modified by the board of hearing aid dealers to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the twenty-seventh day of
September, two thousand, relating to the board of hearing aid
dealers (rule governing the board, 8 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the
twenty-first day of March, two thousand, under the authority of
section five, article seven-a, chapter thirty of this code, modi-
fied by the board of examiners for licensed practical nurses to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-eighth
day of April, two thousand, relating to the board of examiners
for licensed practical nurses (policies and procedures for
development and maintenance of educational programs in
practical nursing, 10 CSR 1), is authorized.
(b) The legislative rule filed in the state register on the twenty-first day of March, two thousand, under the authority of section five, article seven-a, chapter thirty of this code, modified by the board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of April, two thousand, relating to the board of examiners for licensed practical nurses (policies regulating licensure of the licensed practical nurse, 10 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the twenty-first day of March, two thousand, under the authority of section five, article seven-a, chapter thirty of this code, modified by the board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of April, two thousand, relating to the board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse, 10 CSR 3), is authorized.

(d) The legislative rule filed in the state register on the twenty-first day of March, two thousand, under the authority of section five, article seven-a, chapter thirty of this code, modified by the board of examiners for licensed practical nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of April, two thousand, relating to the board of examiners for licensed practical nurses (continuing competence, 10 CSR 6), is authorized.

§64-9-14. Board of medicine.

(a) The legislative rule filed in the state register on the thirty-first day of July, two thousand, authorized under the authority of section seven, article three, chapter thirty of this code, modified by the board of medicine to meet the objections
of the legislative rule-making review committee and refiled in
the state register on the thirteenth day of February, two thou-
sand one, relating to the board of medicine (licensing, disciplin-
ary and complaint procedures: Physicians and podiatrists, 11
CSR 1A), is authorized.

(b) The legislative rule filed in the state register on the
thirty-first day of July, two thousand, authorized under the
authority of section eight, article one, chapter thirty of this
code, modified by the board of medicine to meet the objections
of the legislative rule-making review committee and refiled in
the state register on the twenty-sixth day of February, two
thousand one, relating to the board of medicine (licensure,
disciplinary and complaint procedures, continuing education,
physician assistant, 11 CSR 1B), is authorized.


The legislative rule filed in the state register on the fifteenth
day of August, two thousand, under the authority of section
three, article eight, chapter thirty of this code, modified by the
board of optometry to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-seventh day of November, two thousand, relating
to the board of optometry (rules of the board, 14 CSR 1), is
authorized.

§64-9-16. Board of osteopathy.

The legislative rule filed in the state register on the seventh
day of August, two thousand, under the authority of section
four, article one, chapter thirty of this code, modified by the
board of osteopathy to meet the objections of the legislative
rule-making review committee and refiled in the state register
on the twenty-second day of September, two thousand, relating
to the board of osteopathy (licensing procedures, osteopathic
physicians, 24 CSR 1), is authorized.
§64-9-17. Board of pharmacy.

The legislative rule filed in the state register on the eighteenth day of August, two thousand, under the authority of section nineteen, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of January, two thousand one, relating to the board of pharmacy (rules of the board of pharmacy for the uniform controlled substances act, 15 CSR 2), is authorized, with the following amendment:

On page one of the rule, section two, following subsection 2.1, by inserting a new subsection, designated subsection 2.2, to read ‘The federal regulations are available on the internet at www.access.gpo.gov/nara/cfr/waisidx_00/21cfrv9_00.html.’


The legislative rule filed in the state register on the thirty-first day of August, two thousand, under the authority of section five, article twenty-three, chapter thirty of this code, modified by the board of examiners of radiologic technology to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of February, two thousand one, relating to the board of examiners of radiologic technology (rules of the board, 18 CSR 1), is authorized.


The legislative rule filed in the state register on the third day of August, two thousand, authorized under the authority of section four, article one, chapter thirty of this code, modified by the board of examiners of registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, two thousand one, relating to the board of examiners
of registered professional nurses (disciplinary action, 19 CSR 9), is authorized.

§64-9-20. Secretary of state.

The legislative rule filed in the state register on the fourteenth day of July, two thousand, authorized under the authority of section six, article one-a, chapter three, of this code, relating to the secretary of state (agencies designated to provide voter registration services, 153 CSR 28), is authorized.


The legislative rule filed in the state register on the thirty-first day of August, two thousand, under the authority of section ten, article thirty-two, chapter thirty of this code, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, two thousand one, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology, 29 CSR 1), is authorized.

§64-9-22. Board of veterinary medicine.

The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of December, two thousand, relating to the board of veterinary medicine (schedule of fees, 26 CSR 6), is authorized.
AN ACT to amend and reenact article ten, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia capital company act and establishment of the application procedures to implement the act; authorizing the division of natural resources to promulgate a legislative rule relating to special projects and grants for West Virginia state parks, state forests and state wildlife management areas under the division; authorizing the division of natural resources to promulgate a legislative rule relating to defining the terms to be used concerning all hunting and trapping rules;
authorizing the division of natural resources to promulgate a legislative rule relating to general hunting; authorizing the division of natural resources to promulgate a legislative rule relating to special fishing; authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act; and authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act-practical examination.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AUTHORIZATION FOR THE BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Economic development authority.

§64-10-2. Division of natural resources.

§64-10-3. Division of labor.

§64-10-1. Economic development authority.

1 The legislative rule filed in the state register on the thirty-first day August, two thousand, under the authority of section five, article one, chapter five-e of this code, relating to the economic development authority (general administration of the West Virginia capital company act; establishment of the application procedures to implement the act, 117 CSR 1), is authorized.

§64-10-2. Division of natural resources.

1 (a) The legislative rule filed in the state register on the thirtieth day of August, two thousand, authorized under the authority of section two, article five, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of October,
two thousand, relating to the division of natural resources (special projects and grants for West Virginia state parks, state forests and state wildlife management areas under the division, 58 CSR 34), is authorized, with the following amendment:

"On page 1 subsection 2.1, following the words ‘park, forest’ by inserting a comma and the words ‘wildlife management’.

(b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, two thousand, relating to the division of natural resources (defining the terms to be used concerning all hunting and trapping rules, 58 CSR 46), is authorized.

(c) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of October, two thousand, relating to the division of natural resources (general hunting, 58 CSR 49), is authorized.

(d) The legislative rule filed in the state register on the twenty-fifth of August, two thousand, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, two thousand, relating to the division of natural resources (special fishing, 58 CSR 61), is authorized, with the following amendment:
§64-10-3. Division of labor.

(a) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section three, article three-d, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, two thousand, relating to the division of labor (crane operator certification act, 42 CSR 24), is authorized.

(b) The legislative rule filed in the state register on the first day of September, two thousand, authorized under the authority of section three, article three-d, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, two thousand, relating to the division of labor (crane operator certification act-practical examination, 42 CSR 25), is authorized.

CHAPTER 191

(S. B. 700 — By Senator Tomblin, Mr. President)

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

AN ACT to amend and reenact section two, article seven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Social Security Act as it relates
to members of the Legislature and part-time employees of the Legislature.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, 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 7. SOCIAL SECURITY AGENCY.

§5-7-2. Definitions.

For the purposes of this article:

(a) The term “wages” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term may not include that part of the remuneration which, even if it were paid for “employment” within the meaning of the Federal Insurance Contributions Act, would not constitute “wages” within the meaning of that act.

(b) The term “employment” means any service performed by an employee in the employ of the state, or any political subdivision thereof, or any instrumentality of either, for the employer, except service which in the absence of an agreement entered into under this article would constitute “employment” as defined in section two hundred nine of the Social Security Act.

(c) The term “employee” includes an officer of the state, or one of its political subdivisions or instrumentalities, or members of the state Legislature and part-time employees of the state Legislature.

(d) The term “state agency” means the state auditor.
(e) The term "federal agency" means in each case a federal officer, department or agency as is charged on behalf of the federal government, by or under the applicable federal law, with the particular federal functions referred to in this article in connection with that term.

(f) The term "political subdivision" includes any county, municipal corporation or school district.

(g) The term "instrumentality", when referring to an instrumentality of a state or political subdivision, includes only a legal entity which is separate and distinct from the state or the subdivision and whose employees are not by virtue of their relation to the entity employees of the state or such subdivisions.

(h) The term "applicable federal law" refers to provisions of federal law, including federal regulations and requirements issued pursuant thereto, if and when enacted, as provided for extending the benefits of Title II of the Social Security Act to employees of states, political subdivisions and their instrumentalties.

(i) The term "Social Security Act" means the act of Congress approved the fourteenth day of August, one thousand nine hundred thirty-five, chapter five hundred thirty-one, forty-nine statutes six hundred twenty, officially cited as the "Social Security Act", as the act has been and may, from time to time, be amended.

(j) The term "Federal Insurance Contributions Act" means subchapter A, chapter nine of the Federal Internal Revenue Code as the code has been and may, from time to time, be amended.
AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creating a self-service storage lien act; imposing lien; providing method of enforcing lien; owners duties to lienholders; late fees; and rights and duties of occupant and owner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. SELF-SERVICE STORAGE LIEN ACT.

§38-14-1. Short title.
§38-14-2. Definitions.
§38-14-4. Late fees.
§38-14-5. Enforcement of self-service storage lien.
§38-14-6. Other legal remedies may be used.
§38-14-7. Duties; care, custody and control of property.
§38-14-8. Savings clause.
§38-14-9. Effective date and application of article.

§38-14-1. Short title.

1 This article may be known as the “Self-Service Storage Lien Act”. 
§38-14-2. Definitions.

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

3 (1) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement or this article;

6 (2) "Late fee" means a fee or charge assessed for a default;

7 (3) "Leased space" means the individual storage space at the self-service facility which is leased or rented to an occupant pursuant to a rental agreement;

10 (4) "Occupant" means a person entitled to the use of a leased space at a self-service storage facility under a rental agreement, or the person’s sublessee, successor or assign;

13 (5) "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility or the person’s agent or any other person authorized to manage the facility or to receive rent from any occupant under a rental agreement. The owner of a self-service storage facility is not a warehouseman as defined in section one hundred two, article seven, chapter forty-six of this code unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored, in which event the owner and the occupant are subject to the provisions of article seven, chapter forty-six of this code dealing with warehousemen;

24 (6) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, motor vehicles and household items and furnishings;
(7) "Primary address" means that address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent notice of a change of address;

(8) "Rental agreement" means any agreement or lease that establishes or modifies the terms, conditions or rules concerning the lawful and reasonable use and occupancy of a self-service storage facility;

(9) "Secondary address" means any address provided on the rental agreement and is in addition to the primary address;

(10) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces, other than storage spaces which are leased or rented as an incident to the lease or rental of residential property or dwelling units, to which the occupants have access for storing or removing their personal property; and

(11) "Self-service storage lien" means a lien imposed on the personal property of an occupant by the owner of a self-service storage facility.


(a) The owner has a self-service storage lien on all personal property stored within each leased space for agreed rent, labor or other charges and for expenses reasonably incurred in its sale or destruction pursuant to this article. The self-service storage lien attaches as of the date the personal property is stored within each leased space and remains a lien until the occupant has satisfied the terms of the rental agreement.

(b) In the case of any motor vehicle or watercraft which is subject to a lien previously recorded on the certificate of title, the owner has a self-service storage lien on the vehicle or
watercraft so long as the motor vehicle or watercraft remains stored within the leased space.

(c) The rental agreement must contain:

(1) A statement, in bold type, advising the occupant of the existence of the self-service storage lien and that the personal property stored within the leased space may be sold to satisfy the self-service storage lien or destroyed if the value of the property would not reasonably discharge the costs of the sale and self-service storage lien;

(2) A space for a secondary address immediately following the space provided for the primary address; and

(3) A statement that the occupant may not store hazardous waste or contraband in the leased space.

§38-14-4. Late fees.

The owner may charge a late fee not to exceed ten dollars or ten percent of the monthly rental fee, whichever is greater, for each month the occupant defaults for a period of fifteen days or more.

§38-14-5. Enforcement of self-service storage lien.

(a) (1) If an occupant is in default under a rental agreement and the owner wishes to enforce the lien, the owner shall notify the occupant of the default in a form as prescribed by subsection (c) of this section. If the default is not cured within sixty days after the service of the notice, the owner may:

(A) Proceed to enforce the self-service storage lien by selling the contents of the occupant’s unit at public auction, for cash, and apply the proceeds to satisfaction of the self-service
storage lien, with the surplus, if any, to be disbursed as pro-
vided in this article; or

(B) Destroy the personal property if he or she can demon-
strate by photographs or other images and affidavit of a
knowledgeable and credible person that the personal property
lacks a value sufficient to cover the reasonable expense of a
public auction plus the amount of the self-service storage lien;

(2) In the case of personal property having a fair market
value in excess of one thousand dollars and against which a
secured party has filed a financing statement in the name of the
occupant with the secretary of state or in the office of the clerk
of the county commission in the county where the self-service
storage facility is located or in the county in West Virginia
shown as the last known address of the occupant or if the
personal property is a motor vehicle or watercraft required by
the laws of this state to be registered and the division of motor
vehicles shows a lien on the certificate of title, the owner shall
notify the lienholder of record, by certified mail, at the address
on the financing statement or certificate of title, of the time and
place of the proposed public auction, at least thirty days prior
to the auction. At any time prior to the public sale or destruc-
tion, a secured party may pay the reasonable fees and costs due
to the person possessing the self-service storage lien and take
possession of the personal property which is subject to the lien;

(3) If a lienholder of record of the personal property cannot
be ascertained, the name of “Jane Doe” shall be substituted in
the proceedings brought under this article and no written notice
is required except as prescribed by subsection (c) of this
section. Whenever a motor vehicle or watercraft is sold under
the provisions of this article, the division of motor vehicles
shall issue a certificate of title and registration to the purchaser
upon the purchaser’s application containing the serial or motor
number of the vehicle or watercraft purchased, together with an
affidavit by the person conducting the public auction, evidencing compliance with the provisions of this article.

(b) The owner may, without judicial process, deny the occupant access to the personal property stored at the self-service storage facility if the occupant has been in default for fifteen days: Provided, That the owner clearly states in the rental agreement that he or she may deny the occupant access to the personal property stored in the rental space after a default lasting fifteen or more days and the owner maintains a conspicuous sign on the premises of the self-service storage facility stating the name, street address and telephone number of the owner or the owner's designated agent who the occupant may contact to redeem his or her personal property and upon redemption, the occupant or lienholder be permitted access to his or her personal property at a time not later than the close of business on the next following business day.

(c) Anytime after the occupant has been in default and before the owner can sell or destroy the occupant's personal property in accordance with the terms of this article, the owner shall send a notice of default, by regular mail, and registered or certified mail, postage prepaid, to the occupant at the occupant's last-known primary address and secondary address, if any. The notice of default shall include:

(1) An itemized statement of the owner's claim, indicating the charges due on the date of the notice, the date when the charges became due and those charges that will accrue through the date of sale or destruction of the occupant's personal property;

(2) A demand for payment of the charges due to the owner with an address where payment can be made;

(3) A statement that the contents of the occupant's leased space are subject to the owner's self-service storage lien;
(4) A conspicuous statement that unless the claim is paid prior to the enforcement of the self-storage lien:

(A) The personal property contained in the occupant’s space will be sold at public auction at a specified time and place which may not be less than sixty days from the date of the service; or

(B) The personal property contained in the occupant’s space will be disposed of at a commercially reasonable cost to the occupant at a specified time and place which may not be less than sixty days from the date of the service; and

(d) At any time prior to the public auction or destruction of the personal property pursuant to this section the occupant may pay the full amount necessary to satisfy the self-service storage lien. A lienholder of record may pay an amount not to exceed one hundred seventy-five dollars for incurred rental fees, late fees and safekeeping of the property in addition to an amount not to exceed seventy-five dollars for notice and redeem only the personal property subject to the lien.

(e)(1) Any owner who conducts a public auction pursuant to this section may satisfy the self-service storage lien from the proceeds of the public auction and hold the balance, if any, for delivery on demand to the occupant. If an owner complies with the provisions of this article, his or her liability to the occupant is limited to the net proceeds less the amount of the self-service storage lien and costs received at the public auction;

(2) If an owner conducts a public auction pursuant to this section, the owner’s liability to a lienholder is limited to the proceeds received at the public auction, less the amount of the self-service storage lien and costs. If an owner complies with the provisions of this article, the owner is not liable to a lienholder who fails to claim an interest in the net proceeds within thirty days after the public auction.
(f) Any public auction of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored. An advertisement shall be published in a newspaper of general circulation in the county or municipality in which the public auction is to be held not less than twenty days prior to the public auction. The advertisement must state the:

1. Fact that it is a public auction;
2. Date, time and location of the public auction;
3. Date, time and location which the property may be inspected; and
4. Form of payment acceptable.

(g) A purchaser in good faith of any personal property sold or otherwise disposed of pursuant to this article takes the property free and clear of any rights of persons against whom the lien was valid.

(h) Any notice made pursuant to this section is presumed delivered when it is deposited with the United States postal service and properly addressed with postage prepaid.

§38-14-6. Other legal remedies may be used.

The provisions of this article do not preempt or limit the owner’s use of any additional remedy otherwise allowed by law.

§38-14-7. Duties; care, custody and control of property.

(a) The owner shall use reasonable care in maintaining the self-service storage facility for the purposes of storage of personal property and may not offer to sell insurance to the occupant to cover the owner’s risk or lack of care.
(b) Prior to the sale or destruction of personal property pursuant to this section, the owner shall prepare a detailed inventory of all personal property to be sold or destroyed and shall maintain the inventory listing for a period of two years from the date of the sale or destruction of the property. The occupant shall have access to the inventory listing for the period during which it is maintained by the owner.

(c) Unless the rental agreement specifically provides otherwise, the exclusive care, custody and control of all personal property stored in the leased space remains vested in the occupant.

(d) An occupant may not use a self-service storage facility for residential purposes.

(e) An occupant may not store hazardous waste or contraband in the leased space. An owner who discovers hazardous waste or contraband in a leased space shall promptly notify the appropriate law-enforcement agency and is authorized to deliver the hazardous waste or contraband to the appropriate law-enforcement agency.

§38-14-8. Savings clause.

All rental agreements entered into prior to the first day of July, two thousand one, which have not been extended or renewed after that date remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

§38-14-9. Effective date and application of article.

The provisions of this article apply to all rental agreements entered into or extended or renewed after the first day of July, two thousand one.
AN ACT to repeal section twenty-eight, article seven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three-ff, article one, chapter seven of said code; to amend article fourteen, chapter seventeen-c of said code by adding thereto a new section, designated section fourteen; to amend and reenact sections twenty-four and twenty-six, article seven, chapter twenty of said code; and to amend and reenact section twenty-three, article four, chapter twenty-two-c, all relating to litter generally; authorizing county commissions to hire litter control officers; making it a crime to throw litter from a motor vehicle or other conveyance; assessing three points against driver’s license; creating presumption of responsibility when more than one person is in vehicle; requiring division of motor vehicles promulgate a rule; defining terms; making it a misdemeanor to litter on public or private property or waters of the state; creating fines and community service penalties for certain violations; establishing jail sentence for certain violations; providing that landowners, renters and lessees are not restricted in lawful use of property; creating exceptions for permitted industrial discharges; prohibiting litter near waters of the state and providing exception; providing for verification of community service litter cleanup; establishing presumption of intent if litter is thrown from motor vehicle, boat, airplane or other conveyance; providing for enforcement; creating presumption of ownership if identifying information found in
litter; creating exemption for logos and trademarks; increasing civil penalties for litter conviction; directing moneys from civil penalties to go to litter control fund and county and regional solid waste authorities; requiring solid waste authorities expend funds for litter prevention, cleanup and enforcement; requiring the division of highways to erect signs throughout the state setting forth the penalties for littering; requiring the division of motor vehicles to provide summary of litter law when registering a motor vehicle or issuing an operator’s or chauffeur’s license; authorizing certain state agencies and political subdivisions to place litter receptacles in public areas and establishing penalties for failure to do so; and clarifying that solid waste authorities may expend any available funds to operate solid waste facilities, litter control programs and recycling programs.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three-ff, article one, chapter seven of said code be amended and reenacted; that article fourteen, chapter seventeen-c of said code be amended by adding thereto a new section, designated section fourteen; that sections twenty-four and twenty-six, article seven, chapter twenty of said code be amended and reenacted; and to amend and reenact section twenty-three, article four, chapter twenty-two-c, all to read as follows:

Chapter

7. County Commissions and Officers.

17C. Traffic Regulations and Laws of the Road.

20. Natural Resources.

22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

(a) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings, except for buildings utilized for farm purposes on land actually being used for farming, unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause the dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare, whether the result of natural or manmade force or effect.

(b) Plenary power and authority are hereby conferred upon every county commission to adopt ordinances regulating the removal and cleanup of any accumulation of refuse or debris, overgrown vegetation or toxic spillage or toxic seepage located on private lands which is determined to be unsafe, unsanitary,
dangerous or detrimental to the public safety or welfare whether
the result of natural or manmade force or effect.

(c) The county commission in formally adopting ordinances
shall designate an enforcement agency, which shall consist of
the county engineer (or other technically qualified county
employee or consulting engineer), county health officer or his
or her designee, a fire chief from a county fire company, the
county litter control officer, if the commission chooses to hire
one, and two members at large selected by the county commis-
sion to serve two-year terms. The county sheriff shall serve as
an ex officio member of the enforcement agency and the county
officer charged with enforcing the orders of the county commis-
ion under this section.

(d) Any ordinance adopted pursuant to the provisions of
this section shall provide fair and equitable rules of procedure
and any other standards considered necessary to guide the
enforcement agency, or its agents, in the investigation of
dwelling or building conditions, accumulation of refuse or
debris, overgrown vegetation or toxic spillage or toxic seepage,
and shall provide for fair and equitable rules of procedure for
instituting and conducting hearings in the matters before the
county commission. Any entrance upon premises for the
purpose of making examinations shall be made in a manner as
to cause the least possible inconvenience to the persons in
possession.

(e) Any county commission adopting ordinances authorized
by this section shall hear and determine complaints of the
enforcement agency. Complaints shall be initiated by citation
issued by the county litter control officer or petition of the
county engineer (or other technically qualified county employee
or consulting engineer) on behalf of and at the direction of the
enforcement agency, but only after that agency has investigated
and determined that any dwelling, building, accumulation of
refuse or debris, overgrown vegetation or toxic spillage or toxic seepage is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare and should be repaired, altered, improved, vacated, removed, closed, cleaned or demolished. The county commission shall cause the owner or owners of the private land in question to be served with a copy of the complaint. Service shall be accomplished in the manner provided in rule four of the West Virginia rules of civil procedure. The complaint shall state the findings and recommendations of the enforcement agency and that unless the owner or owners of the property file with the clerk of the county commission a written request for a hearing within ten days of receipt of the complaint, an order will be issued by the county commission implementing the recommendations of the enforcement agency. If the owner or owners of the property file a request for a hearing, the county commission shall issue an order setting this matter down for hearing within twenty days. Hearings shall be recorded by electronic device or by court reporter. The West Virginia rules of evidence do not apply to the proceedings, but each party has the right to present evidence and examine and cross examine all witnesses. The enforcement agency has the burden of proving its allegation by a preponderance of the evidence and has the duty to go forward with the evidence. At the conclusion of the hearing the county commission shall make findings of fact, determinations and conclusions of law as to whether the dwelling or building: Is unfit for human habitation due to dilapidation; has defects that increase the hazard of fire, accidents or other calamities, lacks ventilation, light or sanitary facilities; or any other conditions prevailing in the dwelling or building, whether used for human habitation or not, and whether the result of natural or manmade force or effect, which would cause such dwelling or other building to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; or whether there is an accumulation of refuse or debris; overgrown vegetation; toxic spillage or toxic seepage on private
lands which is determined to be unsafe, unsanitary, dangerous
or detrimental to the public safety or welfare, whether the result
of natural or manmade force or effect. The county commission
has authority to order the owner or owners thereof to repair,
alter, improve, vacate, remove, close, cleanup or demolish the
dwelling or building in question or to remove or cleanup any
accumulation of refuse or debris, overgrown vegetation or toxic
spillage or toxic seepage within a reasonable time and to
impose daily civil monetary penalties on the owner or owners
who fail to obey an order. Appeals from the county commission
to the circuit court shall be in accordance with the provisions of
article three, chapter fifty-eight of this code.

(f) Upon the failure of the owner or owners of the private
land to perform the ordered duties and obligations as set forth
in the order of the county commission, the county commission
may advertise for and seek contractors to make the ordered
repairs, alterations or improvements, or the ordered demolition,
removal or cleanup. The county commission may enter into any
contract with any contractor to accomplish the ordered repairs,
alterations or improvements, or the ordered demolition, removal
or cleanup.

(g) A civil proceeding may be brought in circuit court by
the county commission against the owner or owners of the
private land which is the subject matter of the order of the
county commission to subject the private land in question to a
lien for the amount of the contractor’s costs in making these
ordered repairs, alterations or improvements, or ordered
demotion, removal or cleanup together with any daily civil
monetary penalty imposed and reasonable attorney fees and
court costs and to order and decree the sale of the private land
in question to satisfy the lien, and to order and decree that the
contractor may enter upon the private land in question at any
and all times necessary to make improvements, or ordered
repairs, alterations or improvements, or ordered demolition,
removal or cleanup. In addition, the county commission shall have the authority to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(h) County commissions have the power and authority to receive and accept grants, subsidies, donations and services in kind consistent with the objectives of this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.
(c) In addition to any penalty imposed for littering under the provisions of article seven, chapter twenty of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

(d) The commissioner shall assess points against the driver's license of any driver of a motor vehicle or other conveyance found guilty of violating this section upon receiving notice from a circuit clerk, magistrate court or municipal court of this state of the conviction. Circuit clerks, magistrate courts and municipal courts of this state shall promptly notify the commissioner of the convictions.

(e) When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(f) The commissioner of the division of motor vehicles shall propose or amend legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-24. Definitions.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

§20-7-24. Definitions.

As used in sections twenty-five and twenty-six of this article, unless the context requires a different meaning:
(a) "Collected for commercial purposes" means taking solid waste for disposal from any person for remuneration regardless of whether or not the person taking the solid waste is a common carrier by motor vehicle governed by article two, chapter twenty-four-a of this code.

(b) "Court" means any circuit, magistrate or municipal court.

(c) "Litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(d) "Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the director's rules promulgated pursuant to subdivision eight, subsection (a), section twenty-five of this article.

(e) "Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county of this state, or an area held open for unrestricted access by the general public.

(f) "Waters of the state" means generally, without limitation, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds, impounding reservoirs, springs, wells, watercourses and wetlands.

§20-7-26. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.
(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section twenty-four of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.
(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than five hundred dollars nor more than two thousand dollars, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes, is guilty of a misdemeanor. Upon conviction the person is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars, or confinement in a county or regional jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(7) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(8) The sentence of litter cleanup shall be verified by conservation officers from the division of natural resources or environmental inspectors from the division of environmental
protection. Any defendant receiving the sentence of litter cleanup shall provide within a time to be set by the court written acknowledgment from a conservation officer or environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(9) Any person who has been found by the court to have willfully failed to comply with the terms of a litter cleanup sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties.

(10) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency’s statutory authority.

(11) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission or the division of natural resources or the division of environmental protection, then the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.
(b) Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this section: Provided, That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty in the sum of not less than one hundred dollars nor more than one thousand dollars as costs for cleanup, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit fifty percent of a civil penalty received pursuant to this section to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the litter control fund which is hereby continued. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining fifty percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, cleanup and enforcement. The county commission
shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to section eight, article four, chapter twenty-two-c of this code.

(e) The commissioner of the division of motor vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and section fourteen, article fourteen, chapter seventeen-c of the code.

(f) The commissioner of the division of highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates or otherwise controls any public area as may be designated by the director by rule promulgated pursuant to subdivision (8), subsection (a), section twenty-five of this article, shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the director, any person who fails to place and maintain the litter receptacles upon his or her premises in violation of this subsection or the rules of the director shall be fined fifteen dollars per day of the violation.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.
§22C-4-23. Powers, duties and responsibilities of authority generally.

1 The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

4 (1) Sue and be sued, plead and be impleaded and have and use a common seal.

6 (2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.

9 (3) The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.

14 (4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.

17 (5) To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.

19 (6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.

25 (7) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem
necessary or advisable in connection with exercising powers as
provided herein.

(8) Make available the use or services of any solid waste
facility collection, transportation and processing facilities
related thereto, to any person, partnership, corporation or
governmental agency consistent with this article.

(9) Acquire by gift or purchase, hold and dispose of real
and personal property in the exercise of its powers and duties.

(10) Make and enter all contracts, leases and agreements
and to execute all instruments necessary or incidental to the
performance of its duties and powers.

(11) Employ managers, engineers, accountants, attorneys,
planners and such other professional and support personnel as
are necessary in its judgment to carry out the provisions of this
article.

(12) Receive and accept from any source such grants, fees,
real and personal property, contributions, funds transferred
from a solid waste facility and funds of any nature as may
become available to the authority, in order to carry out the
purposes of this article including, but not limited to, the
development, operation or management of litter control
programs and recycling programs: Provided, That nothing
contained in this subsection shall be construed to extend the
authority or jurisdiction of the public service commission to
activities under this subsection solely because the activities are
funded by moneys transferred from a solid waste facility, nor
may the use of transferred funds by a solid waste authority be
considered by the public service commission in carrying out its
duties under section one-f, article two, chapter twenty-four of
this code.

(13) Cooperate with and make such recommendations to
local, state and federal government and the private sector in the
technical, planning and public policy aspects of litter control
and solid waste management as the authority may find appro-
appropriate and effective to carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service charges
and other charges for the use or services of any solid waste
facilities or any solid waste collection, transportation and
processing services provided by the authority.

(15) Prohibit the dumping of solid waste outside the hours
of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility
and the mandatory disposal provision in section ten of this
article by referring violations to the division of environmental
protection or the appropriate law-enforcement authorities.

(17) Do all acts necessary and proper to carry out the
powers expressly granted to the authority by this article and
powers conferred upon the authority by this article.

All rules promulgated by the authority pursuant to this
article are exempt from the provisions of article three, chapter
twenty-nine-a of this code.

CHAPTER 194

(Com. Sub. for S. B. 193 — By Senators Hunter, Fanning, Minard,
Mitchell, Oliverio, Redd, Facemyer, McKenzie, Kessler and Unger)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four and ten, article five of said chapter; and to amend and reenact section two, article seven of said chapter, all relating to mental hygiene generally; updating definitions; creating an outpatient commitment alternative upon a voluntary treatment agreement; required findings for commitment; directing convalescent status for certain patients; training for new commissioner; authorizing the hiring of municipal officers for transportation; creating exception to requirement of a forthwith hearing with conditions therefor; authorizing multicounty cooperative agreements to allow prompt hearings during nonjudicial hours or on nonjudicial days; authorizing limited period of evaluation and treatment prior to final hearings with consent of the patient or in the event of a psychiatric or medical emergency; duties of prosecuting attorneys, mental hygiene commissioners, circuit judges and magistrates in mental hygiene proceedings; allowing, under certain circumstances, for hearings to be held in a jurisdiction other than that in which the person is found; authorizing prosecutors, mental hygiene commissioners and sheriffs to function outside their jurisdictions upon agreement; allowing introduction of reliable hearsay at probable cause proceedings; allowing for transfer of out-of-state residents where probable cause is found; allowing counties to seek reimbursement of expenses for out-of-county residents found in the committing county; and requiring only authorized personnel to transport patients involuntarily committed.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, four and ten, article five of said chapter be amended and reenacted; and that section two, article seven of said chapter be amended and reenacted, all to read as follows:
ARTICLE 1. WORDS AND PHRASES DEFINED.


1. As used in this chapter, "addiction" means a maladaptive pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring within thirty days prior to the filing of the petition:

   (1) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school or home, including, but not limited to, repeated absences or poor work performance related to substance use; substance-related absences, suspensions or expulsions from school; or neglect of children or household;

   (2) Recurrent use in situations in which it is physically hazardous, including, but not limited to, driving while intoxicated or operating a machine when impaired by substance use;

   (3) Recurrent substance-related legal problems; or

   (4) Continued use despite knowledge or having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

(b) As used in this section, "substance" shall mean alcohol, controlled substances as defined in sections two hundred four, two hundred six, two hundred eight and two hundred ten, article two, chapter sixty-a of this code or anything consumed for its...
§27-1-12. Likely to cause serious harm.

(a) "Likely to cause serious harm" means an individual is exhibiting behaviors consistent with a medically recognized mental disorder or addiction, excluding, however, disorders that are manifested only through antisocial or illegal behavior and as a result of the mental disorder or addiction:

1. The individual has inflicted or attempted to inflict bodily harm on another; or

2. The individual, by threat or action, has placed others in reasonable fear of physical harm to themselves; or

3. The individual, by action or inaction, has presented a danger to others in his or her care; or

4. The individual has threatened or attempted suicide or serious bodily harm to himself or herself; or

5. The individual is behaving in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless adequate treatment is afforded.

(b) In making the "likely to cause serious harm" determination, judicial, medical, psychological and other evaluators and decisionmakers should utilize all available information, including psychosocial, medical, hospitalization and psychiatric information and including the circumstances of any previous...
commitments or convalescent or conditional releases that are relevant to a current situation, in addition to the individual’s current overt behavior. The rules of evidence shall be followed in making the “likely to cause serious harm” determination except that hearsay evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of supreme court of appeals; use of certified municipal law-enforcement officers.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-10. Transportation for the mentally ill or substance abuser.

(a) Appointment of mental hygiene commissioners. — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code.
All persons newly appointed to serve as mental hygiene commissioners shall attend and complete an orientation course, within one year of their appointment, consisting of at least three days of training provided annually by the supreme court of appeals. In addition, existing mental hygiene commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the supreme court of appeals, which course shall include, but not be limited to, instruction on the manifestations of mental illness and addiction. Persons attending such courses outside the county of their residence shall be reimbursed out of the budget of the supreme court — general judicial for reasonable expenses incurred. The supreme court shall establish rules for such courses, including rules providing for the reimbursement of reasonable expenses as authorized herein.

(b) Duties of mental hygiene commissioners. —

(1) Mental hygiene commissioners may sign and issue summons for the attendance, at any hearing held pursuant to section four, article five of this chapter, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; and may make findings of fact on evidence and may make conclusions of law, but such findings and conclusions shall not be binding on the circuit court. The circuit court, by order entered of record, shall allow the commissioner a reasonable fee for services rendered in connection with each case. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by such chief judge. It shall be the duty of a mental hygiene commissioner to conduct orderly inquiries into the mental health of the individual sought to be committed concern-
ing the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign language and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuit may serve in such capacity in a jurisdiction other than that of his or her original appointment if such be agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of contiguous counties entered into to provide prompt resolution of mental hygiene matters during noncourt hours or on nonjudicial days.

(c) **Duties of prosecuting attorney.** — It shall be the duty of the prosecuting attorney or one of his or her assistants to represent the applicants in all proceedings filed pursuant to the provisions of this article. The services of a prosecuting attorney or an assistant prosecuting attorney at a proceeding held under the provisions of this article, during noncourt hours or on a nonjudicial day, may be waived by the circuit court, mental hygiene commissioner or magistrate holding such proceeding with the concurrence of the applicant if a finding is made by the circuit court, mental hygiene commissioner or magistrate that the applicant's interests are not jeopardized by such waiver. Notwithstanding any provision of this code to the contrary, prosecuting attorneys may enter into cooperative agreements with prosecuting attorneys of contiguous counties, with the concurrence of their respective circuit courts and county commissions, whereby hearings held during noncourt hours or
nonjudicial days may be held in a county other than that where
the person is found or prosecuting attorneys or assistant
prosecuting attorneys of a county which is party to such a
cooperative agreement may serve or a prosecutor in a hearing
held in the county where the person is found in order to
facilitate prompt resolution of the matter.

(d) Duties of sheriff. — Upon written order of the circuit
court or of a mental hygiene commissioner in the county where
the individual formally accused of being mentally ill or
addicted is a resident or is found, the sheriff of that county shall
take said individual into custody and transport him or her to and
from the place of hearing and the mental health facility. The
sheriff shall also maintain custody and control of the accused
individual during the period of time in which the individual is
waiting for the involuntary commitment hearing to be convened
and while such hearing is being conducted: Provided, That an
individual who is a resident of a state other than West Virginia
shall, upon a finding of probable cause, be transferred to his or
her state of residence for treatment pursuant to the provisions
of subsection (p), section four of this article: Provided, how-
ever, That where an individual is a resident of West Virginia
but not a resident of the county in which he or she is found and
there is a finding of probable cause, the county in which the
hearing is held may seek reimbursement from the county of
residence for reasonable costs incurred by the county attendant
to the mental hygiene proceeding. Notwithstanding any
provision of this code to the contrary, sheriffs may enter into
cooperative agreements with sheriffs of contiguous counties,
with the concurrence of their respective circuit courts and
county commissions, whereby transportation and security
responsibilities for hearings held pursuant to the provisions of
this article during noncourt hours or on nonjudicial days may be
shared in order to facilitate prompt hearings and to effectuate
transportation of persons found in need of treatment.
(e) **Duty of sheriff upon presentment to mental health care facility.** — Where a person is brought to a mental health care facility for purposes of evaluation for commitment under the provisions of this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) **Duties of supreme court of appeals.** — The supreme court of appeals shall provide uniform petition, procedure and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

§27-5-2. **Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.**

(a) **When application for involuntary custody for examination may be made.** — Any adult person may make application for involuntary hospitalization for examination of an individual when said person has reason to believe that:

(1) The individual is addicted, as defined in section eleven, article one of this chapter; or

(2) The individual is mentally ill and, because of his or her mental illness, the individual is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.
(b) Oath; to whom application for involuntary custody for examination is made; contents of application; custody; probable cause hearing; examination. —

(1) The person making such application shall do so under oath.

(2) Application for involuntary custody for examination may be made to the circuit court or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found.

(3) The person making such application shall give such information and state such facts therein as may be required upon the form provided for this purpose by the supreme court of appeals.

(4) The circuit court or the mental hygiene commissioner may thereupon enter an order for the individual named in such action to be detained and taken into custody for the purpose of holding a probable cause hearing as provided for in subdivision (5) of this subsection and for the purpose of an examination of the individual by a physician or a psychologist. Such examination shall be provided or arranged by a community mental health center designated by the secretary of the department of health and human resources to serve the county in which the action takes place. Said order shall specify that such hearing be held forthwith and shall provide for the appointment of counsel for the individual: Provided, That the order may allow the hearing to be held up to twelve hours after its entry rather than forthwith if the circuit court of the county or circuit in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of said persons. Where a physician or psychologist has performed the examination required by the
provisions of this subdivision, the community mental health
center may waive the requirement of a forthwith hearing upon
approving such examination. Notwithstanding the provisions of
this subsection, subsection (r), section four of this article shall
apply regarding payment by the county commission for
examinations at hearings.

In the event immediate detention is believed to be necessary
for the protection of the individual or others at a time when no
circuit court judge or mental hygiene commissioner is available
for immediate presentation of the application, a magistrate
designated by the chief judge of the judicial circuit may accept
the application and, upon a finding that such immediate
detention is necessary pending presentation of the application
to the circuit court or mental hygiene commissioner, may order
the individual to be temporarily detained in custody until the
earliest reasonable time that the application can be presented to
the circuit court or mental hygiene commissioner, which
temporary period of detention may not exceed twenty-four
hours: *Provided*, That where the individual has been examined
by a psychologist or physician and said psychologist or
physician has certified the individual meets the criteria for
involuntary hospitalization, the individual may be temporarily
detained until the next judicial day. In no event shall an
individual be so detained for more than seventy-two hours
without a hearing.

(5) A probable cause hearing shall be held before a magis-
trate designated by the chief judge of the judicial circuit, the
mental hygiene commissioner or circuit judge of the county of
which the individual is a resident or where he or she was found.
If requested by the individual or his or her counsel, the hearing
may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and shall have
the right to present evidence, confront all witnesses and other
evidence against him or her and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. The individual shall have the right to remain silent and to be proceeded against in accordance with the rules of evidence of the supreme court of appeals except as provided for in section twelve, article one of this chapter. At the conclusion of the hearing, the magistrate, mental hygiene commissioner or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that such individual, as a result of mental illness, is likely to cause serious harm to himself or herself or to others or is addicted.

(6) If the magistrate, mental hygiene commissioner or circuit court judge at a probable cause hearing or at a final commitment hearing held pursuant to the provisions of section four of this article finds that the individual, as a result of mental illness, is likely to cause serious harm to himself, herself or others or is addicted and because of such mental illness or addiction requires treatment, the magistrate, mental hygiene commissioner or circuit court judge may consider evidence on the question of whether the individual’s circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. Such agreement shall be in writing and approved by the individual, his or her counsel and the magistrate, mental hygiene commissioner or circuit judge and the mental health treatment provider. If the magistrate, mental hygiene commissioner or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to such outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement shall constitute evidence that such
treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness remains likely to cause serious harm to himself, herself or others or remains addicted, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of section three of this article may be entered. In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or medicaid, the secretary of health and human resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: Provided, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status shall be construed as creating a right to receive outpatient mental health services or treatment or as obligating any person or agency to provide such services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization shall not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, however, That release pursuant to a voluntary treatment agreement shall not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years.
if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to article five of this chapter the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the presiding officer shall not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual made subject to said order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order cancelled or modified. Nothing in this section shall affect the appellate and habeas corpus rights of any individual subject to any commitment order.

(7) If the certifying physician or psychologist determines that a person requires involuntary hospitalization for an addiction to a substance which, due to the degree of addiction, creates a reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) Admission to a mental health facility for examination. — Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in section two of this article and upon certification by one physician or one psychologist that he
or she has examined the individual and is of the opinion that the
individual is mentally ill, and because of such mental illness is
likely to cause serious harm to himself or herself or to others if
not immediately restrained, or is addicted. Where a magistrate
has ordered the temporary detention of an individual pending a
hearing pursuant to the provisions of subdivision (4), subsection
(b), section two of this article and the individual has been
examined by a psychologist or physician and found to meet the
criteria for involuntary hospitalization, such individual may be
examined, with his or her consent or in the event of a medical
or psychiatric emergency, and treated until the next judicial
day, or for up to seventy-two hours, whichever shall first occur.
The chief medical officer of said mental health facility may,
with the approval of the secretary of the department of health
and human resources, transfer such individual to a state hospital
or to another similar type of mental health facility after deter-
mining that no less restrictive treatment alternative is suitable
or available. The chief medical officer of the mental health
facility admitting the individual shall forthwith make a report
thereof to the secretary of the department of health and human
resources.

(b) Three-day time limitation on examination. — If said
examination does not take place within three days from the date
the individual is taken into custody, the individual shall be
released. If the examination reveals that the individual is not
mentally ill or addicted, the individual shall be released.

(c) Three-day time limitation on certification. — The
certification required in subsection (a) of this section shall be
valid for three days. Any individual with respect to whom such
certification has been issued may not be admitted on the basis
thereof at any time after the expiration of three days from the
date of such examination.
(d) **Findings and conclusions required for certification.** — A certification under this section must include findings and conclusions of the mental examination, the date, time and place thereof and the facts upon which the conclusion that involuntary commitment is necessary is based.

(e) **Notice requirements.** — When an individual is admitted to a mental health facility pursuant to the provisions of this section, the chief medical officer thereof shall immediately give notice of the individual’s admission to the individual’s spouse, if any, and one of the individual’s parents or guardians, or if there be no such spouse, parents or guardians, to one of the individual’s adult next of kin: Provided, That such next of kin shall not be the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual’s residence. Such notices other than to the community mental health facility shall be in writing and shall be transmitted to such person or persons at his, her or their last-known address by certified or registered mail, return receipt requested.

(f) **Five-day time limitation for examination and certification at mental health facility.** — After the individual’s admission to a mental health facility, he or she may not be detained more than five days, excluding Sundays and holidays, unless, within such period, the individual is examined by a staff physician and such physician certifies that in his or her opinion the patient is mentally ill and is likely to injure himself or herself or others or will remain addicted if allowed to be at liberty.

(g) **Ten-day time limitation for institution of final commitment proceedings.** — If, in the opinion of the examining physician, the patient is mentally ill and because of such mental illness is likely to injure himself or herself or others or will continue to abuse a substance to which he or she is addicted if
allowed to be at liberty, the chief medical officer shall, within ten days from the date of admission, institute final commitment proceedings as provided in section four of this article. If such proceedings are not instituted within such ten-day period, the patient shall be immediately released. After the request for hearing is filed, the hearing shall not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) Thirty-day time limitation for conclusion of all proceedings. — If all proceedings as provided in articles three and four of this chapter are not completed within thirty days from the date of institution of such proceedings, the patient shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) Involuntary commitment. — Except as provided in section three of this article, no individual may be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found, or if the individual is hospitalized in a mental health facility located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility: Provided, That, if said individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) How final commitment proceedings are commenced. — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath and
the certificate or affidavit is hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident, or where he or she may be found, or the county of the mental health facility, if he or she is hospitalized in a mental health facility located in a county other than where he or she resides or may be found by an adult person having personal knowledge of the facts of the case.

(c) Oath; contents of application; who may inspect application; when application cannot be filed. —

(1) The person making such application shall do so under oath.

(2) The application shall contain statements by the applicant that he or she believes because of symptoms of mental illness the individual is likely to cause serious harm to himself or herself or to others or is addicted and the grounds for such belief, stating in detail the recent overt acts upon which such belief is based.

(3) The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents related thereto, filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual shall not be open to inspection by any person other than the individual, except upon authorization of the individual or his or her legal representative or by order of the circuit court, and such records may not be published except upon the authorization of the individual or his or her legal representative.

(4) Applications shall not be accepted for individuals who only have epilepsy, a mental deficiency or senility.

(d) Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate. —
(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill and that because of such mental illness the individual is likely to cause serious harm to himself or herself or to others if he or she is allowed to remain at liberty or is addicted and therefore he or she should be hospitalized, stating in detail the recent overt acts upon which such conclusion is based.

(2) A certificate is not necessary only when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) Notice requirements; eight days’ notice required. — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing: (1) To the individual; (2) to the applicant or applicants; (3) to the individual’s spouse, one of the parents or guardians, or if the individual does not have a spouse, parents or parent or guardian, to one of the individual’s adult next of kin: Provided, That such person is not the applicant; (4) to the mental health authorities serving the area; (5) to the circuit court in the county of the individual’s residence if the hearing is to be held in a county other than that of such individual’s residence; and (6) to the prosecuting attorney of the county in which the hearing is to be held. Such notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify the nature of the charges against the individual; the facts underlying and supporting the application of involuntary commitment; the right to have counsel appointed; the right to consult with and be represented by counsel at every stage of the proceedings; and the time and
place of the hearing. The notice to the individual’s spouse, parents or parent or guardian, the individual’s adult next of kin, or to the circuit court in the county of the individual’s residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(f) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition of the individual and the likelihood of him or her causing serious harm to himself or herself or to others or being addicted.

(2) If the designated physician or psychologist reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to such examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician or psychologist. All such orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After such examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to section three of this article.
If the reports of the appointed physician or psychologist do not confirm that the individual is mentally ill and might be harmful to himself or herself or to others or is addicted then the proceedings for involuntary hospitalization shall be dismissed.

Rights of the individual at the final commitment hearing; seven days’ notice to counsel required. —

The individual shall be present at the final commitment hearing and he or she, the applicant and all persons entitled to notice of such hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

In the event that the individual has not retained counsel, the court or mental hygiene commissioner at least six days prior to hearing shall appoint a competent attorney and shall inform the individual of the name, address and telephone number of his or her appointed counsel.

The individual shall have the right to have an examination by an independent expert of his or her choice and testimony from such expert as a medical witness on his or her behalf. The cost of such independent expert shall be borne by the individual unless he or she is indigent.

The individual shall not be compelled to be a witness against himself or herself.

Duties of counsel representing individual; payment of counsel representing indigent. —

The counsel representing an individual shall conduct a timely interview, make investigation and secure appropriate witnesses and shall be present at the hearing and protect the interest of the individual.
(2) Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code.

(i) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner shall be bound by the rules of evidence promulgated by the supreme court of appeals except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. Any psychologist or physician testifying shall bring all records pertaining to said individual to said hearing. Such medical evidence obtained pursuant to an examination under this section, or section two or three of this article, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual, his or her counsel or the prosecuting attorney within
thirty days, if the same is requested for the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(j) Requisite findings by the court. —

(1) Upon completion of the final commitment hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not the individual is mentally ill and because of illness is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty or is addicted and is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county.

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

(3) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.

(k) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months.
(2) The individual shall not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

(4) An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the department of health and human resources, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization: Provided, That if the patient or his or her counsel requests a hearing, then a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(1) Dismissal of proceedings. — If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill but is not because of such illness likely
to cause serious harm to himself or herself or to others if
allowed to remain at liberty, the proceedings shall be dismissed.

(m) **Immediate notification of order of hospitalization.** —
The clerk of the circuit court in which an order directing
hospitalization is entered, if not in the county of the individual’s
residence, shall immediately upon entry thereof forward a
certified copy of same to the clerk of the circuit court of the
county of which the individual is a resident.

(n) **Consideration of transcript by circuit court of county of
individual’s residence; order of hospitalization; execution of
order.** —

(1) If the circuit court or mental hygiene commissioner is
satisfied that hospitalization should be ordered but finds that the
individual is not a resident of the county in which the hearing
is held and the individual is not currently a resident of a mental
health facility, a transcript of the evidence adduced at the final
commitment hearing of such individual, certified by the clerk
of the circuit court, shall forthwith be forwarded to the clerk of
the circuit court of the county of which such individual is a
resident, who shall immediately present such transcript to the
circuit court or mental hygiene commissioner of said county.

(2) If the circuit court or mental hygiene commissioner of
the county of the residence of the individual is satisfied from
the evidence contained in such transcript that such individual
should be hospitalized as determined by the standard set forth
above, the circuit court shall order the appropriate hospitaliza-
tion as though the individual had been brought before the circuit
court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted forthwith to the clerk of
the circuit court of the county in which the hearing was held
who shall execute said order promptly.
(o) Order of custody to responsible person. — In lieu of ordering the patient to a mental health facility, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from such responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of such individual until further order of the court.

(p) Individual not a resident of this state. — If the individual found to be mentally ill or addicted by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be forthwith given to the secretary of the department of health and human resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual except as qualified by the interstate compact on mental health.

(q) Report to the secretary of the department of health and human resources. —

(1) The chief medical officer of a mental health facility admitting a patient pursuant to proceedings under this section shall forthwith make a report of such admission to the secretary of the department of health and human resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility to comply with the time requirements of this article, the chief medical officer of such mental health facility shall forthwith after the release of the individual make a report to the secretary of the department of health and human resources or to his or her designee of the failure to comply.
(r) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission. —

(1) The state shall pay the commissioner’s fee and such court reporter fees as are not paid and reimbursed under article twenty-one, chapter twenty-nine of this code out of a special fund to be established within the supreme court of appeals to be known as the “mental hygiene fund”.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and witness called by the indigent individual.

§27-5-10. Transportation for the mentally ill or substance abuser.

(a) Whenever transportation of an individual is required under the provisions of article four or five of this chapter, it shall be the duty of the sheriff to provide immediate transportation to or from the appropriate mental health facility or state hospital: Provided, That, where hospitalization occurs pursuant to article four of this chapter, the sheriff may permit, upon the written request of a person having proper interest in the individual’s hospitalization, for the interested person to arrange for the individual’s transportation to the mental health facility or state hospital if the sheriff determines that such means are suitable given the individual’s condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participa-
tion and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) Use of certified municipal law-enforcement officers. — Sheriffs and municipal governments are hereby authorized to enter into written agreements whereby certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, "certified municipal law-enforcement officer" means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code.

(d) Nothing in this section is intended to alter security responsibilities for the patient by the sheriff unless mutually agreed upon as provided in subsection (c) of this section.

ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-2. Release of patients on convalescent status.

(a) The chief medical officer of a mental health facility may release an involuntary patient on convalescent status (trial visit) when the chief medical officer believes such release is in the best interest of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by a mental health facility, not necessarily the facility in which the patient was previously hospitalized, including a plan of
treatment on an outpatient basis to ensure that the patient receives whatever care and treatment he or she might require. At the end of six months on convalescent status, the patient must be discharged from any involuntary commitment order that might have been entered against him or her and he or she cannot be involuntarily returned to any mental health facility unless a new commitment proceeding has been instituted against him or her. When a patient released on convalescent status is discharged from his or her involuntary commitment, it shall be the responsibility of the chief medical officer of the mental health facility of which the individual was a patient prior to being placed on convalescent status to immediately make a report of the discharge of the patient to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

(b) Notwithstanding any provision of this code to the contrary, anytime an individual is involuntarily committed to a mental health facility for inpatient treatment pursuant to the provisions of article five of this chapter due to a mental illness and it is determined by the medical director of the mental health facility that the use of medication by the individual is necessary to avoid the recurrence of the behavior which caused the involuntary hospitalization, initial release from the mental health facility shall be on convalescent status with the requirement that the individual follow a designated treatment plan which may include the taking of medication unless the medical director makes a written finding that release on convalescent status will serve no treatment purpose. If an individual released on convalescent status does not comply with the terms and conditions of convalescent status, any person may file a petition to revoke such convalescent status and said petition shall be subject to the procedures and provisions of this article.
AN ACT to amend chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two, relating to creating the West Virginia clean coal technology council to develop pilot projects relating to clean coal and alternative coal use; legislative findings; definitions; membership and terms of the council; meeting requirements; continuation of council; and powers and duties of the council.

Be it enacted by the Legislature of West Virginia:

That chapter five-c 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, to read as follows:

ARTICLE 2. WEST VIRGINIA CLEAN COAL TECHNOLOGY ACT.

§5C-2-1. Legislative findings.
§5C-2-2. Definitions.
§5C-2-3. Creation and membership of the West Virginia clean coal technology council.
§5C-2-4. Administration.
§5C-2-5. Powers, duties, information and reports of council.
§5C-2-6. Continuation of council.
§5C-2-1. Legislative findings.

(a) The Legislature finds that:

1. (1) Coal is an important fuel source for keeping the household energy costs low in the state of West Virginia;

2. (2) Continued protection of the state’s environment, public health and welfare requires that new emissions reduction technologies that protect and improve air quality be evaluated for their environmental effectiveness and economic viability;

3. (3) The diversity of fuel used to generate electricity is a significant factor in providing reliable and economical energy to the citizens of the state of West Virginia;

4. (4) The price of electricity generated with coal has remained relatively unchanged over the past twenty years;

5. (5) The continued recovery and utilization of coal resources are important to the state’s economy;

6. (6) Advancements in clean coal technology clearly demonstrate that electricity from coal can be produced in a more efficient, economical and environmentally friendly manner; and

7. (7) Advancements in alternative coal usage has produced useful household, commercial and industrial technologies.

(b) The Legislature determines that, consistent with the protection of the public health and welfare, the protection of air quality, the protection of the environment, the operation of existing industries, the enhancement of the long-term economic health and the improved reliability of electric generation in the state, it is a goal of this state’s energy policy that technologies be explored to increase the efficiencies and decrease the emissions from electricity generated by coal.
It is the policy of this state that clean coal technologies and alternative coal uses will be explored in order to:

(1) Preserve fuel diversity and maintain reliable, low-cost sources of electric power;

(2) Identify technologies for reducing the emissions from existing coal-fired electric generation; and

(3) Identify new, cleaner coal-fired electric generation technologies that may be used to provide new generating capacity.

§5C-2-2. Definitions.

In this section:

(1) “Council” means the West Virginia clean coal technology council.

(2) “Designated agency” means the state agency designated by the council to provide administrative support to the council.

(3) “Pilot projects” means the voluntary application of new coal utilization technology on existing or new facilities designed to reduce the emission of air pollutants.

§5C-2-3. Creation and membership of the West Virginia clean coal technology council.

(a) The West Virginia clean coal technology council is created with legislative oversight to coordinate actions for the study and development of clean coal technology pilot projects in this state.

(b) The council is composed of:
§SC-2-4. Administration.

(a) Members of the council shall be appointed for two-year terms and may be reappointed for additional terms;

(b) The council shall meet not less than once each calendar quarter for the first year and at a frequency to be determined by the council thereafter, at a time determined by the council and at the call of the cochairs;

(c) An appropriate state agency shall be designated by the council as being responsible for administering the council. The designated agency shall provide, from its existing staff, the staff necessary to assist the council in carrying out its responsibilities. This agency shall have the authority to request and
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12 distribute federal funding for use by the council in carrying out
13 its responsibilities;

14 (d) The council is subject to the administrative procedures
15 act pursuant to chapter twenty-nine-a of this code.

§5C-2-5. Powers, duties, information and reports of council.

1 (a) The council shall:

2 (1) Coordinate the activities of the designated agency with
3 regard to the specific clean coal technology charges of this
4 council with appropriate private, public, state or federal
5 agencies/organizations;

6 (2) Provide direction to the designated agency to study,
7 develop and promulgate requests for proposals for pilot projects
8 in West Virginia that will assist the council in evaluating
9 technologies, assessing economics, evaluating the environmental
10 benefits, seeking funds, evaluating the useful life of pilot
11 projects and determining the importance of clean coal technolo-
12 gies to energy policy in West Virginia. Requests for proposals
13 shall include an assessment of the potential for the use of
14 financial and other incentives for potential respondents;

15 (3) Provide oversight to the designated agency in seeking
16 public and private funding to support the activities of the
17 council and the financing of pilot projects;

18 (4) Determine a reasonable projected duration for the pilot
19 projects;

20 (5) Encourage and facilitate the development of alternative
21 coal uses and related coal technologies;

22 (6) File with the governor, speaker of the House of Dele-
23 gates and president of the Senate before the date that the next
24 regular legislative session convenes a report of the council’s
activities during the two proceeding years and any recommendations for legislation considered necessary with regard to the
pilot projects; and

(7) Publish the report required by subdivision (6) of this
subsection.

(b) The designated state agency having the responsibility
for administering the clean coal technology council shall
maintain a public file relating to the council.

(c) The designated agency having responsibility for
administering the clean coal technology council shall make
available to the public a copy of any council report that is
provided to the Legislature.

§5C-2-6. Continuation of council.

Pursuant to the provisions of article ten, chapter four of this
code, the council for clean coal technology shall continue to
exist until the first day of July, two thousand five, unless sooner
terminated or unless continued or reestablished pursuant to the
provisions of that article.

CHAPTER 196

(S. B. 689 — By Senators Jackson, Kessler, Fanning and Minear)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-13a. Preblast survey requirements.
§22-3-22a. Blasting restrictions; site specific blasting design requirement.
§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

§22-3-13a. Preblast survey requirements.

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator's designee will perform preblast surveys in accordance with subsection (f) of this section:

(1) For surface mining operations that are less than two hundred acres in a single permitted area or less than three hundred acres of contiguous or nearly contiguous area of two or more permitted areas, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

(2) For all other surface mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the
permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater;

(3) For permitted surface disturbance of underground mines, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted surface area or areas.

(b) Within thirty days of the effective date of this section, any operator identified in subdivision (2), subsection (a) of this section that has already completed preblast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section shall notify in writing all additional owners and occupants of man-made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator's designee must perform the additional preblast surveys in accordance with subsection (f) of this section within ninety days of the effective date of this section.

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the preblast survey shall indicate that access was refused, impossible or impractical. The
operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The office of explosives and blasting may not determine the preblast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the office of explosives and blasting.

(d) If a preblast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a preblast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a preblast survey on structures constructed after the original preblast survey.

(f) The preblast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface mining operator and the permit number;

(4) The current general liability insurer of the surface mining operator;

(5) The name, address and telephone number of the person or firm performing the preblast survey;
(6) The current general liability insurer of the person or firm performing the preblast survey;

(7) The date of the preblast survey and the date it was mailed or delivered to the office of explosives and blasting;

(8) A general description of the structure and its appurtenances, including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the preblast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate preblast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate preblast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate preblast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction
technique and materials used on the structure or its appurtenances or both structure and appurtenances;

(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the chief which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional preblast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the preblast survey shall be submitted to the office of explosives and blasting at least fifteen days prior to the commencement of any production blasting. The office of explosives and blasting shall review each preblast survey as to form and completeness only and notify the operator of any deficiencies: Provided, That once all required surveys have been reviewed and accepted by the office of explosives and blasting, blasting may commence sooner than fifteen days after submittal. The office of explosives and
blasting shall provide a copy of the preblast survey to the owner or occupant.

(h) The surface mining operator shall file notice of the preblast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a preblast survey has been conducted or waived. The notice shall be on a form prescribed by the office of explosives and blasting.

(i) The chief of the office of explosives and blasting shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting the qualifications for individuals and firms performing preblast surveys.

(j) The provisions of this section do not apply to the extraction of minerals by underground mining methods.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

(a) For purposes of this section, the term “production blasting” means blasting that removes the overburden to expose underlying coal seams and does not include construction blasting.

(b) For purposes of this section, the term “construction blasting” means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures or underground coal mine sites and does not include production blasting.

(c) For purposes of this section, the term “protected structure” means any of the following structures that are situated outside the permit area: An occupied dwelling; a temporarily unoccupied dwelling which has been occupied within the past ninety days; a public building; a structure for commercial purposes; a school; a church; a community or institutional building; and a public park or a water well.
(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site-specific blast design approved by the office of explosives and blasting. The site-specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:

1. Prevent injury to persons;
2. Prevent damage to public and private property outside the permit area;
3. Prevent adverse impacts on any underground mine;
4. Prevent change in the course, channel or availability of ground or surface water outside the permit area; and
5. Reduce dust outside the permit area.

In the development of a site-specific blasting plan, consideration shall be given, but is not limited to, the physical condition, type and quality of construction of the protected structure, the current use of the protected structure and the concerns of the owner or occupant living in the protected structures identified in the blasting schedule notification area.

(f) An owner or occupant of a protected structure may waive the blasting prohibition within three hundred feet. If a protected structure is occupied by a person other than the owner, both the owner and the occupant of the protected structure shall waive the blasting prohibition within three hundred feet in writing. The operator shall send copies of all written waivers executed pursuant to this subsection to the office of explosives and blasting. Written waivers executed and filed with the office of explosives and blasting are valid during the life of the permit or any renewals of the permit and are enforceable against any subsequent owners or occupants of the protected structure.
The provisions of this section do not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: Provided, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant to said section.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.

(a) Blasting shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the division of environmental protection establishes after an inspection that a blast at a surface coal mine operation as defined by the provisions of subdivision (2), subsection (a), section thirteen-a of this article was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than one thousand dollars nor more than five thousand dollars.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface mining operator shall be assessed a penalty of not less than five thousand dollars nor more than ten thousand dollars.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any
assessment set forth within a reasonable time established by the
director, the surface mining operator's permit is subject to an
immediate issuance of a cessation order, as set out in section
sixteen of this article. The cessation order shall only be released
upon written order of the director of the division of environ-
mental protection when the following conditions have been
met:

(A) A written plan has been established and filed with the
director assuring that additional violations will not occur;

(B) The permittee has provided compensation for the
property damages or the assurance of adequate compensation
for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other
assurances as the director considers appropriate to compensate
for future property damages. The monetary assurances required
shall be in an amount at least equal to the amount of compensa-
tion required in paragraph (B), subdivision (3) of this subsec-

(4) In addition to the penalties described in subdivisions
(1), (2) and (3) of this subsection for the second and subsequent
offenses on any one permitted area regardless of the time
period, the owner of the protected structure is entitled to a
rebuttable presumption that the property damage is a result of
the blast if: (A) A preblast survey was performed; and (B) the
blasting site to which the second or subsequent offense relates
is within seven tenths of a mile of the protected structure.

(5) No more than one offense may arise out of any one shot.
For purposes of this section, "shot" means a single blasting
event composed of one or multiple detonations of explosive
material or the assembly of explosive materials for this purpose.
One "shot" may be composed of numerous explosive charges
detonated at intervals measured in milliseconds.
(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the division of environmental protection may not impose penalties, as provided for in subsection (b) of this section, on an operator for the violation of any rule identified in subsection (b) of this section that is merely administrative in nature.

(d) The remedies provided in this section are not exclusive and may not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the division of environmental protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet of a protected structure, without an approved site-specific blast design or not in accordance with an approved site-specific blast design for production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in subsection (b) of this section shall be assessed by the director, collected by the director and deposited with the treasurer of the state of West Virginia in the "general school fund".

(g) The director shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section do not apply to the extraction of minerals by underground mining methods: Provided, That nothing contained in this section may be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.
AN ACT to amend and reenact sections one hundred one, three hundred three, three hundred eight, three hundred nine and three hundred ten, article two-a, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; general prohibition on use of diesel equipment in underground mines; diesel equipment commission; extending the time for the commission to promulgate initial rules; eliminating the arbitration process; providing for petition to commission for exemption from prohibition on diesel equipment; and granting authority to commission to grant certain limited site-specific requests.

Be it enacted by the Legislature of West Virginia:

That sections one hundred one, three hundred three, three hundred eight, three hundred nine and three hundred ten, article two-a, chapter twenty-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 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.


Diesel-powered equipment for use in underground coal mines may only be approved, operated and maintained in accordance with rules, requirements and standards established pursuant to this article. Diesel-powered equipment may not be used in underground coal mines until the West Virginia diesel equipment commission promulgates its initial rules, requirements and standards governing the operation of diesel equipment in underground coal mines: Provided, That the diesel equipment commission may approve limited site-specific requests for experimental and testing use of diesel-powered equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods consistent with the provisions of section three hundred ten of this article.


(a) The members of the commission shall be appointed to initial terms as follows:

(1) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven, and ending on the thirtieth day of June, one thousand nine hundred ninety-nine;

(2) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven, and ending on the thirtieth day of June, two thousand;
(3) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven, and ending on the thirtieth day of June, two thousand one.

(b) Of the two members appointed under each of subdivisions (1), (2) and (3), subsection (a) of this section, one shall be a person who can reasonably be expected to represent the viewpoint or interests of coal operators in this state and one shall be a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state.

(c) Members serving on the commission on the effective date of the amendment of this section may continue to serve until the expiration of their terms. Thereafter, members shall be nominated and appointed in the manner provided in this section and section three hundred four of this article.

(d) After the initial appointments, all members shall be appointed for terms of four years. Members are eligible for reappointment.

§22A-2A-308. Promulgation of initial rules by the commission.

(a) The West Virginia diesel equipment commission shall prepare and adopt the initial rules for the operation of diesel equipment in underground coal mines in this state. In preparing and adopting initial rules, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines.

(b) In promulgating the initial rules pursuant to subsection (a) of this section, the commission shall follow the procedures
set forth in article three, chapter twenty-nine-a of this code that
are prescribed for an agency proposing a legislative rule, to the
point where an agency would approve a rule for submission to
the Legislature. At that point, the commission shall proceed to
final adoption of the initial rules and file a notice of the final
adoption in the state register and with the legislative rule-
making review committee. Final adoption of the initial rules
may be approved only upon a majority vote of all six members
of the commission. All six members must be present when a
vote is taken. Upon final adoption by the commission, the initial
rules are thereby promulgated and have the effect of law
without further action by the commission or the Legislature.
The initial rules shall be published in the code of state rules and
continue in effect until modified or superseded in accordance
with the provisions of this article.

§22A-2A-309. Commission’s authority to approve site-specific
experimental testing prior to initial rules.

The commission is hereby authorized to approve limited
site-specific requests for experimental and testing use of diesel-
powered equipment in underground coal mines prior to promul-
gation of initial rules in accordance with subsections (b), (c),
(d), (e), (f) and (g), section three hundred ten of this article.
Final approval of a site-specific request may be approved only
upon a majority vote of all six members of the commission. All
six members must be present when a vote is taken.

§22A-2A-310. Duties of commission following promulgation of
initial rules.

(a) After the promulgation of the initial rules, the commis-
sion shall have as its primary duties the implementation of this
article and the evaluation and adoption of state of the art
technology and methods, reflected in engines and engine
components, emission control equipment and procedures, that
when applied to diesel-powered underground mining machinery
shall reasonably reduce or eliminate diesel exhaust emissions
and enhance protections of the health and safety of miners. The
technology and methods adopted by the commission shall have
been demonstrated to be reliable. In making a decision to adopt
new technology and methods, the commission shall consider
the highest achievable measures of protection for miners' health
and safety through available technology, engineering controls
and performance requirements and shall further consider the
cost, availability, adaptability and suitability of any available
technology, engineering controls and performance requirements
as they relate to the use of diesel equipment in underground
coal mines. Any state of the art technology or methods adopted
by the commission shall not reduce or compromise the level of
health and safety protection of miners.

(b) Upon application of a coal mine operator, the commis-
sion shall consider site-specific requests for the use of diesel
equipment in underground coal mines and for the use of
alternative diesel-related health and safety technologies and
methods. The commission’s action on applications submitted
under this subsection shall be on a mine-by-mine basis. Upon
receipt of a site-specific application, the commission shall
conduct an investigation, which investigation shall include
consultation with the mine operator and the authorized repre-
sentatives of the miners at the mine. Authorized representatives
of the miners shall include a mine health and safety committee
elected by miners at the mine, a person or persons employed by
an employee organization representing miners at the mine or a
person or persons authorized as the representative or representa-
tives of miners of the mine in accordance with MSHA regula-
tions at 30 C.F.R. Pt. 40 (relating to representative of miners).
Where there is no authorized representative of the miners, the
commission shall consult with a reasonable number of miners
at the mine. Upon completion of the investigation, the commis-
sion may approve the application for the site-specific request:
Provided, That an application for a site-specific request under
this subsection may be approved only upon a majority vote of all six members of the commission. All six members must be present when a vote is taken.

(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the commission shall complete its investigation. The time period may be extended with the consent of the applicant.

(2) The commission shall have thirty days in which to render a final decision approving or rejecting the application.

(3) The commission members shall not approve an application made under this section if, at the conclusion of the investigation, the commission members have made a determination that the use of the alternative technology or method will reduce or compromise the level of health and safety protection of miners.

(4) The written approval of an application for the use of alternative technologies or methods shall include the results of the commission’s investigation and describe the specific conditions of use for the alternative technology or method.

(5) The written decision to reject an application for the use of alternative technologies or methods shall include the results of the commission’s investigation and shall outline in detail the basis for the rejection.

(c) The commission shall establish conditions for the use of diesel-powered equipment in shaft and slope construction operations at coal mines.

(d) In performing its functions, the commission shall have access to the services of the board of coal mine health and safety. The board shall make clerical support and assistance available to enable the commission to carry out its duties.
(e) Any action taken by the commission to either approve
or reject the use of an alternative technology or method, or
establish conditions under subsection (c) of this section, shall
be final and binding and not subject to further review except
where a decision by the commission may be deemed to be an
abuse of discretion or contrary to law. If any party affected by
a decision of the commission believes that the decision is an
abuse of discretion or contrary to law, that party may file a
petition for review with the circuit court of Kanawha County in
accordance with the provisions of the administrative procedures
act relating to judicial review of governmental determinations.
The court, in finding that any decision made by the commission
is an abuse of discretion or contrary to law, shall vacate and, if
appropriate, remand the case.

(f) The powers and duties of the commission shall be
limited to the matters regarding the use of diesel-powered
equipment in underground coal mines.

(g) Appropriations for the funding of the commission and
to effectuate the purposes of this article shall be made to a
budget account hereby established for that purpose in the
general revenue fund.

CHAPTER 198

(H. B. 2901 — By Delegates Caputo, Butcher, Tucker,
Kuhn, Frederick, Fletcher and Coleman)

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

AN ACT to amend and reenact section three, article six, chapter
twenty-two-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to membership of the
board of coal mine health and safety; and setting forth new
provisions regarding the method and nomination of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination
and appointment; meetings; vacancies; quorum.

(a) The board of coal mine health and safety, heretofore
established, is continued as provided by this article. The board
consists of seven members who are residents of this state, and
who are appointed as hereinafter specified in this section:

(1) The governor shall appoint, by and with the advice and
consent of the Senate, three members to represent the viewpoint
of those operators in this state. When such members are to be
appointed, the governor shall request from the major trade
association representing operators in this state a list of three
nominees for each such position on the board. All such nomi-
ees shall be persons with special experience and competence
in health and safety. There shall be submitted with such list a
summary of the qualifications of each nominee. If the full lists
of nominees are submitted in accordance with the provisions of
this subdivision, the governor shall make the appointments
from the persons so nominated. For purposes of this subdivi-
sion, the major trade association representing operators in this
state is that association which represents operators accounting
for over one half of the coal produced in mines in this state in
the year prior to the year in which the appointment is to be
made.
(2) The governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the board. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each such position on the board. The nominees shall have a background in health and safety. The governor shall make the appointments from the requested list of nominees.

(3) All appointments made by the governor under the provisions of subdivisions (1) and (2), of this subsection shall be with the advice and consent of the Senate.

(4) The seventh member of the board is the director of the office of miners' health, safety and training, or his or her designee, who serves as chair of the board as an ex officio nonvoting member, except that the director may vote if there is a tie vote when the board is acting pursuant to subsection (e), section four of this article or subdivision (3), subsection (f), section seven of this article. The director shall furnish to the board such secretarial, clerical, technical, research and other services as are necessary to the conduct of the business of the board, not otherwise furnished by the board.

(b) Members serving on the board on the effective date of this article may continue to serve until the expiration of their terms. Thereafter, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members are eligible for reappointment.

(c) On or after the first day of January, two thousand two, the governor shall appoint, subject to the approval of a majority
of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a health and safety administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section six of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the health and safety administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless
said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chair, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chair: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the health and safety administrator shall notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the governor within thirty days of his or her receipt of the list of nominations.

(f) A quorum of the board is five members which shall include the director of the office of miners' health, safety and training, or his or her designee, at least two members represent-
ing the viewpoint of operators and at least two members
representing the viewpoint of the working miners, and the board
may act officially by a majority of those members who are
present, except that no vote of the board may be taken unless all
seven members are present.

CHAPTER 199

(H. B. 2440—By Delegates Mahan, Coleman, Pino,
C. White, Faircloth, Smirl and Stemple)

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

AN ACT to amend chapter seventeen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty-four-a, relating to
disposal of abandoned motor vehicles, junked motor vehicles, and
abandoned or inoperative household appliances; defining terms;
prohibiting abandonment of motor vehicles, parts of motor
vehicles or inoperative household appliances; establishing
penalties; authorizing law-enforcement agencies to take custody
of abandoned motor vehicles, junked motor vehicles, parts of
motor vehicles and inoperable household appliances; authorizing
law-enforcement agencies to hire or contract with others to store
and dispose of abandoned motor vehicles, junked motor vehicles, parts of
motor vehicles and inoperative household appliances; authorizing
law-enforcement agencies to hire or contract with others to store
and dispose of abandoned motor vehicles, junked motor vehicles, parts of
motor vehicles and inoperative household appliances; requiring notice to owners and lienholders of record before
disposing of abandoned or junked motor vehicles; allowing
owners and lienholders to reclaim abandoned or junked motor
vehicles; establishing requirements for reclaiming abandoned or
junked motor vehicles; providing that failure to reclaim an
abandoned or junked motor vehicle is waiver of all right, title and
interest to the vehicle; authorizing sale of abandoned or junked motor vehicles; authorizing disposal of vehicles abandoned at automobile dealerships and repair shops; requiring salvage yards and demolishers to dispose of abandoned vehicles within six months of receiving the vehicles or pay title fees and taxes; requiring sale of inoperative or abandoned household appliances; authorizing payment of expenses incurred in taking possession, storage and sale of abandoned or junked motor vehicles and inoperative or abandoned household appliances; requiring any funds remaining after payment of expenses be held for ninety days to allow owner to claim the funds; requiring deposit of all unclaimed funds into the road fund; and providing for injunctive and other relief for violation of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§ 17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.
§ 17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

Unless the context clearly indicates a different meaning, as used in this article:

(1) "Commissioner" means the commissioner of the division of highways or his or her designee.

(2) "Abandoned household appliance" means a refrigerator, freezer, range, stove, automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air conditioning unit, commode, bed springs, mattress or other furniture, fixtures or appliances to which no person claims ownership and which is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher.

(3) "Abandoned motor vehicle" means any motor vehicle, or major part thereof, which is inoperative and which has been abandoned on public property for any period of time over five days, other than in an enclosed building or in a licensed salvage yard or at the business establishment of a demolisher; or any motor vehicle, or major part thereof, which has remained on private property without consent of the owner or person in control of the property for any period of time over five days; or any motor vehicle, or major part thereof, which is unattended, discarded, deserted and unlicensed and is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, That a motor vehicle, or major part thereof, shall not be considered an abandoned motor vehicle if:

(a) The owner of the motor vehicle is storing the motor vehicle on the owner's property; (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being stored; and (d) the owner is a business licensed to do business in the state of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.
(4) "Demolisher" means any person licensed by the commissioner of the division of highways whose business, to any extent or degree, is to convert a motor vehicle or any part thereof or an inoperative household appliance into processed scrap or scrap metal or into saleable parts or otherwise to wreck or dismantle vehicles or appliances.

(5) "Enclosed building" means a structure surrounded by walls or one continuous wall and having a roof enclosing the entire structure and includes a permanent appendage thereto.

(6) "Enforcement agency" means any of the following or any combination of the following:

(a) Public law-enforcement officers of this state, including conservation officers;

(b) Public law-enforcement officers of any county, city or town within this state; and

(c) The commissioner of the division of highways, his or her duly authorized agents and employees.

(7) "Inoperative household appliance" means a refrigerator, freezer, range, stove, automatic dishwasher, clothes washer, clothes dryer, trash compactor, television set, radio, air conditioning unit, commode, bed springs, mattress or other furniture, fixture or appliance which by reason of mechanical or physical defects can no longer be used for its intended purpose and which is either not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher.

(8) "Junked motor vehicle" means a motor vehicle, or any part thereof which: (a) Is discarded, wrecked, ruined, scrapped or dismantled; (b) cannot pass the state inspection required by article sixteen, chapter seventeen-c of this code; and (c) is either
not serving a functional purpose or use or is not in an enclosed building, a licensed salvage yard or the actual possession of a demolisher: Provided, That a motor vehicle, or major part thereof, shall not be considered a junked motor vehicle if: (a) The owner of the motor vehicle is storing the motor vehicle on the owner’s property; (b) the motor vehicle is being stored for the purpose of using its parts on other motor vehicles owned by the owner; (c) the owner owns other motor vehicles similar to the motor vehicle being stored; and (d) the owner is a business licensed to do business in the state of West Virginia and not in the primary business of offering motor vehicles or parts thereof for sale.

(9) “Licensed salvage yard” means a salvage yard licensed under article twenty-three of this chapter.

(10) “Motor vehicle” means a vehicle which is or was self-propelled, including, but not limited to, automobiles, trucks, buses and motorcycles.

(11) “Person” means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

§17-24A-2. Abandonment of motor vehicle prohibited; inoperative household appliances prohibited in certain places; penalty.

(a) No person shall, within this state, abandon a motor vehicle or major part thereof upon the right-of-way of any public highway, upon any other public property or upon any private property without the consent of the owner or person in control of the property, or upon property owned or controlled by that person, unless it be at a licensed salvage yard or at the business establishment of a demolisher, or a business licensed to do business in the state of West Virginia and not in the primary business of offering motor vehicles or parts thereof for
sale. Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced and fined as set forth below.

(b) No person shall, within this state, place or abandon any inoperative household appliance upon the right-of-way of any public highway or upon any other public property; nor shall any person, within this state, place or abandon any inoperative household appliance upon any private property unless it be at a licensed salvage yard, solid waste facility, other business authorized to accept such solid waste or at the business establishment of a demolisher. Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced and fined as set forth below.

(c) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle, or inoperative household appliance does not exceed one hundred pounds in weight or twenty-seven cubic feet in size is subject to a fine of not less than fifty dollars nor more than one thousand dollars or, in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(d) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle or inoperative household appliance is greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet, is subject to a fine of not less than five hundred dollars nor more than two thousand dollars or, in the discretion of the court, may be sentenced to perform community
service by cleaning up litter from any public highway, road, street, alley or any other public park or public property or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(e) Any person who is guilty of a misdemeanor as described in this section and the abandoned motor vehicle, junked motor vehicle or inoperative household appliance is greater than five hundred pounds in weight or two hundred sixteen cubic feet in size is subject to a fine not less than twenty-five hundred dollars or not more than twenty-five thousand dollars or confinement in a county or regional jail for not more than one year, or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(f) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(g) The sentence of litter cleanup shall be verified by conservation officers from the division of natural resources or environmental inspectors from the division of environmental protection. Any defendant receiving the sentence of litter cleanup shall provide within a time to be set by the court written acknowledgment from a conservation officer or environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(h) Any person who has been found by the court to have willfully failed to comply with the terms of a litter cleanup sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties.

Any enforcement agency which has knowledge of or discovers or finds any abandoned motor vehicle, junked motor vehicle or inoperative household appliance on either public or private property may take it into its custody and possession. For that purpose, the enforcement agency may employ its own personnel, equipment and facilities or hire persons, equipment and facilities for the purpose of removing, preserving and storing abandoned motor vehicles, junked motor vehicles or inoperative household appliances. Provided, That before taking any abandoned motor vehicle or junked motor vehicle into custody and possession from private property, the enforcement agency shall give the private property owner and the owner of the motor vehicle, if ascertainable, a thirty-day notice by registered or certified mail that the action will be taken unless the motor vehicle is restored to a functional use.

§17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

(a) The enforcement agency which takes into custody and possession an abandoned motor vehicle or junked motor vehicle shall, within fifteen days after taking custody and possession thereof, notify the last-known registered owner of the motor vehicle and all lienholders of record that the motor vehicle has been taken into custody and possession, the notification to be by registered or certified mail, return receipt requested. The notice shall:

(1) Contain a description of the motor vehicle, including the year, make, model, manufacturer's serial or identification number or any other number which may have been assigned to
the motor vehicle by the commissioner of motor vehicles and
any distinguishing marks;

(2) Set forth the location of the facility where the motor
vehicle is being held and the location where the motor vehicle
was taken into custody and possession;

(3) Inform the owner and any lienholders of record of their
right to reclaim the motor vehicle within ten days after the date
notice was received by the owner or lienholders, upon payment
of all towing, preservation and storage charges resulting from
taking and placing the motor vehicle into custody and posses-
sion; and

(4) State that the failure of the owner or lienholders of
record to exercise their right to reclaim the motor vehicle within
the ten-day period shall be deemed a waiver by the owner and
all lienholders of record of all right, title and interest in the
motor vehicle and of their consent to the sale or disposal of the
abandoned motor vehicle or junked motor vehicle at a public
auction or to a licensed salvage yard or demolisher.

(b) If the identity of the last registered owner of the
abandoned motor vehicle or junked motor vehicle cannot be
determined or if the certificate of registration or certificate of
title contains no address for the owner or if it is impossible to
determine with reasonable certainty the identity and addresses
of all lienholders, notice shall be published as a Class I legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, the publication area shall
be the county wherein the motor vehicle was located at the time
the enforcement agency took custody and possession thereof
and the notice shall be sufficient to meet all requirements of
notice pursuant to this article. Any notice by publication may
contain multiple listings of abandoned motor vehicles and
junked motor vehicles. The notice shall be published within
fifteen days after the motor vehicle is taken into custody and possession and shall have the same contents required for a notice pursuant to subsection (a) of this section, except that the ten-day period shall run from the date the notice is published as aforesaid.

(c) An enforcement agency which hires any person or entity to take into custody and possession an abandoned motor vehicle or junked motor vehicle pursuant to this section shall notify the person or entity hired of the name and address of the registered owner of the motor vehicle, if known, and all lienholders of record, if any, within fifteen days after the vehicle is taken into custody and possession: Provided, That the requirements of this subsection shall not apply to motor vehicles for which the registered owner cannot be ascertained by due diligence or investigation.

(d) The person or entity hired by an enforcement agency to take into custody or possession an abandoned motor vehicle or junked motor vehicle shall, within thirty days after the possession, notify the registered owner of the vehicle and all lienholders of record, if any, as identified by the enforcement agency pursuant to subsection (c) of this section, by registered mail, return receipt requested, that the motor vehicle has been taken into custody and possession. The notice shall have the same contents required for a notice pursuant to subsection (a) of this section, including the ten-day period the owner or lienholder has to reclaim the motor vehicle. Upon the issuance of the notice, the identified owner of the motor vehicle is liable and responsible for all costs for towing, preservation and storage of the motor vehicle: Provided, That failure to issue the notice required by this subsection within thirty days after possession of the motor vehicle relieves the identified owner of the motor vehicle of any liability for charges for towing, preservation and storage in excess of the sum of the first five days of the charges: Provided, however, That the requirements
of this subsection do not apply to motor vehicles for which the registered owner thereof cannot be ascertained by due diligence or investigation.

(e) For an abandoned motor vehicle or junked vehicle having a loan value of two thousand five hundred dollars or less, as ascertained by values placed upon motor vehicles using a standard industry reference book, a person or entity hired by an enforcement agency to tow the abandoned motor vehicle or junked motor vehicle may, if the motor vehicle is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section or if the identity of the last registered owner of the abandoned motor vehicle or junked motor vehicle cannot be determined or if the certificate of registration or certificate of title contains no address of the owner or if it is impossible to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the division of motor vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The person or entity may then sell the motor vehicle at private sale or public auction.

(f) For an abandoned motor or junked motor vehicle having a loan value of two thousand five hundred dollars or less, as ascertained by values placed upon motor vehicles using a standard industry reference book, a licensed motor vehicle dealer, as defined in section one, article one, chapter seventeen-a of this code, or a motor vehicle repair facility may, if a motor vehicle is abandoned on the property or place of business of the dealer or a motor vehicle repair facility and is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section or if the identity of the last registered owner of the abandoned motor vehicle cannot be determined or if the certificate of registration or certificate of title contains no address of the owner or if it is impossible to
determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the division of motor vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The dealer or motor vehicle repair facility may then sell the motor vehicle at private sale or public auction.


(a) If an abandoned motor vehicle or junked motor vehicle is not reclaimed as provided for in section four of this article, the enforcement agency in possession of the abandoned motor vehicle or junked motor vehicle shall sell it either at a public auction or to a licensed salvage yard or demolisher. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership and shall receive a sales receipt from the enforcement agency which disposed of the motor vehicle. The sales receipt at the sale shall be sufficient title only for purposes of transferring the motor vehicle to a licensed salvage yard or to a demolisher for demolition, wrecking or dismantling and no further titling of the motor vehicle shall be necessary by either the purchaser at the auction, the licensed salvage yard or the demolisher, who shall be exempt from the payment of any fees and taxes required under article three, chapter seventeen-a of this code: Provided, That the purchaser at the auction must place the motor vehicle in the possession of a licensed salvage yard or demolisher within twenty days from the date he or she purchased the motor vehicle and the licensed salvage yards or demolisher must demolish, wreck or dismantle the motor vehicle within six months after taking possession of the motor vehicle and if the licensed salvage yard or demolisher does not, the licensed salvage yard or demolisher shall be required to pay
all fees and taxes required under article three, chapter seven-a of this code.

(b) When an enforcement agency has in its custody and possession inoperative or abandoned household appliances collected in accordance with section seven of this article it shall sell the property from time to time at public auction or to a licensed salvage yard or demolisher.


From the proceeds of any sale, the enforcement agency which sold the abandoned motor vehicle, junked motor vehicle or inoperative household appliance shall reimburse itself for any expenses it may have incurred in removing, towing, preserving and storing said property and the expenses of conducting any auction and any notice and publication expenses incurred pursuant to this article.

Any remainder from the proceeds of the sale of an abandoned motor vehicle or junked motor vehicle after payment of expenses shall be held for the last registered owner of the motor vehicle or any lienholder for ninety days, after which time, if no owner or lienholder claims the remainder, it shall be deposited in the state road fund.


In addition to all other remedies provided for in this article, the attorney general of this state, the prosecuting attorney of any county where any violation of any provision of this article occurs or any citizen, resident or taxpayer of the county where any violation of any provision of this article occurs may apply to the circuit court, or the judge thereof in vacation, of the county where the alleged violation occurred for an injunction to
8 restrain, prevent or abate the maintenance and storage of
9 abandoned motor vehicles, junked motor vehicles or inoperative
10 household appliances, in violation of any provision of this
11 article.

CHAPTER 200

(Com. Sub. for H. B. 2256 — By Delegates C. White,
Faircloth, Smirl, Givens and Coleman)

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

AN ACT to repeal section eight, article two-a, chapter seventeen-a of
the code of West Virginia, one thousand nine hundred thirty-one,
as amended; and to amend and reenact sections seven and eleven
of said article, all relating to the authority of the division of motor
vehicles to disclose motor vehicle records to persons for purposes
of marketing and solicitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. UNIFORM MOTOR VEHICLES RECORDS DISCLOSURE
ACT.


The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities including survey research and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors:

(A) For the purpose of verifying the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, the
execution or enforcement of judgments and orders or pursuant
to an order of any court;

(5) For use in research and producing statistical reports, so
long as the personal information is not published, redisclosed
or used to contact individuals;

(6) For use by any insurer or insurance support organization
or by a self-insured entity, its agents, employees or contractors
in connection with claim investigation activities, antifraud
activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or
impounded vehicles;

(8) For use by any licensed private investigator agency or
licensed security service for any purpose permitted under this
section;

(9) For use by an employer or its agent or insurer to obtain
or verify information relating to a holder of a commercial
driver’s license that is required under the Commercial Motor

(10) For use in connection with the operation of private toll
transportation facilities;

(11) For bulk distribution for surveys, marketing or solicita-
tions after the division has implemented methods and proce-
dures to ensure that the information will be used, rented or sold
solely for bulk distribution for surveys, marketing and solicita-
tions, and only if the person whose information will be used has
authorized the use of his or her name and address for those
purposes; and

(12) For any other use specifically authorized by law that
is related to the operation of a motor vehicle or public safety.

(a) An authorized recipient of personal information, except a recipient under subsection (11), section seven of this article may resell or redisclose the information for any use permitted under said section seven except the use for bulk distribution for surveys, marketing or solicitations as provided in subsection (11), section seven of this article.

(b) An authorized recipient of personal information for bulk distribution for surveys, marketing or solicitations, under subsection (11), section seven of this article may resell or redisclose personal information only in accordance with the terms of said subsection allowing surveys for marketing and solicitations to be directed only to those individuals who have authorized the use of their name and address for those purposes.

(c) Any authorized recipient who resells or rediscloses personal information shall: (1) Maintain for a period of not less than five years, records as to the person or entity receiving information, and the permitted use for which it was obtained; and (2) make the records available for inspection by the division, upon request.

CHAPTER 201

(S. B. 395 — By Senators Unger and Snyder)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3a. Payment of personal property taxes and emergency ambulance fees prerequisite to registration or renewal; duties of assessors; schedule of automobile values.

(a) Certificates of registration and renewal of registration of any vehicle or registration plates for any vehicle may not be issued or furnished by the division of motor vehicles, or any other officer charged with the duty, unless the applicant for the certificate or registration plate, except an applicant exempt from payment of registration fees under section eight, article ten of this chapter, has furnished the receipt provided for in this section to show full payment of:

1. (A) The personal property taxes for the calendar year which immediately precedes the calendar year in which application is made on all vehicles which were registered with the division of motor vehicles in the applicant’s name on the tax day for the former calendar year; and

2. (B) All emergency ambulance fees owed pursuant to section seventeen, article fifteen, chapter seven of this code, at the time the receipt is prepared, except for any of the fees that are not yet past due: Provided, That any county which does not impose emergency ambulance fees or which chooses not to show emergency ambulance fees on the personal property tax
receipt may issue a receipt without complying with paragraph (B), subdivision (1) of this subsection and the commissioner of motor vehicles may issue or renew registration without regard to such fees.

(2)(A) When an applicant has chosen the optional two-year registration system provided for in section sixteen of this article, the personal property taxes for the two calendar years immediately preceding the calendar year in which application is made on all vehicles which were registered with the division of motor vehicles in the applicant's name on the tax day for the former calendar year; and

(B) All emergency ambulance fees owed pursuant to section seventeen, article fifteen, chapter seven of this code, at the time the receipt is prepared, except for any of the fees that are not yet past due: Provided, That any county which does not impose emergency ambulance fees or which chooses not to show emergency ambulance fees on the personal property tax receipt may issue a receipt without complying with paragraph (B), subdivision (1) of this subsection and the commissioner of motor vehicles may issue or renew registration without regard to such fees.

(b) If the applicant contends that any registered vehicle was not subject to personal property taxation for that year or that he or she does not owe any emergency ambulance fees if a receipt for fees are required by the county, he or she shall furnish the information and evidence as the commissioner of motor vehicles may require to substantiate his or her contention.

(c) The assessor shall require any person having a duty to make a return of property for taxation to him or her to furnish information identifying each vehicle subject to the registration provisions of this chapter. When the property taxes on any vehicle have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or printed receipt for the payment and shall retain for his or her records a duplicate of the receipt. It is the duty of the assessor
and sheriff, respectively, to see that the assessment records and
the receipts contain information adequately identifying the
vehicle as registered under the provisions of this chapter. The
officer receiving payment shall sign each receipt in his or her
own handwriting.

(d) Each receipt given to a taxpayer for payment of per-
sonal property taxes on a vehicle may indicate on the receipt
whether the taxpayer has paid all emergency ambulance fees
owed pursuant to section seventeen, article fifteen, chapter
seven of this code at the time the receipt is prepared, except for
any of the fees that are not yet past due: Provided, That the
county shall include on the same notice of personal property
taxes due the additional amount due for all emergency ambu-

(e) The state tax commissioner shall annually compile a
schedule of automobile values, based on the lowest values
shown in a nationally accepted used car guide. The state tax
commissioner shall furnish the schedule to each assessor and it
shall be used by him or her as a guide in placing the assessed
values on all automobiles in his or her county.

CHAPTER 202

(S. B. 511 — By Senators Bowman and McKenzie)

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

AN ACT to amend article three, chapter seventeen-a of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section three-b,
relating to assessors giving notice regarding motor vehicles
unregistered in the state; establishing factors to consider to
determine residency status of vehicle owner; and providing referral by assessor to county prosecuting attorney in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That article three, chapter seventeen-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 three-b, to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3b. Motor vehicles believed illegally unregistered; assessor to make verification.

If, on information and belief the assessor has reason to believe that a motor vehicle has not been properly registered in this state in violation of the provisions of section one of this article, he or she shall give notice by posting on the vehicle a notice advising the owner of the vehicle to contact the office of the assessor within fifteen days to verify that the owner is not a resident of the state of West Virginia. Factors to be considered in determining whether or not such person is a resident of this state include, but are not limited to, the following:

1. The person is registered to vote in this state;
2. The person enrolls the person’s child or children to be educated in an elementary or secondary school in this state or has complied with applicable provisions of this code indicating an intent to home school the person’s child or children in this state;
3. The person is receiving public assistance from this state;
(4) The person resides or has continuously remained in this state for a period exceeding thirty days, except for infrequent brief absences;

(5) The person has accepted employment or engages in any trade, profession or occupation within this state, except that this does not include a person who is commuting from the person’s residence in another state or whose employment is seasonal or temporary, not exceeding thirty days;

(6) The person has filed for a homestead tax exemption on property in this state;

(7) The person subscribes to public utilities in this state in his or her own name;

(8) The person receives his or her mail in this state pursuant to verification from the United States postal service.

In the event the assessor receives no response from the posting, the assessor will refer the matter to the prosecuting attorney. If it is determined that the vehicle has not been properly registered in this state, the owner of the vehicle is in violation of the provisions of this article and the person will be subject to the criminal sanctions contained in section one of this article.

CHAPTER 203

(Com. Sub. for H. B. 2961 — By Delegates Warner and Shelton)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two, four, six, eight and eighteen, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the establishment of a dealer recovery fund; setting forth legislative findings; creating a dealer recovery fund control board; promulgation of rules; providing for an annual dealer recovery fund fee; providing exemptions; requiring surety bonds; and providing for payment of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS, WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

§17A-6-2a. Dealer recovery fund created.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

§17A-6-2. Legislative findings, declaration of public policy and dealer recovery fund.

1 (a) The Legislature hereby determines and finds that in the past some persons engaged in the business of selling new or used motor vehicles, house trailers, trailers, recreational vehicles, motorcycles, or used motor vehicle parts, and in the


business of wrecking or dismantling motor vehicles, have not had the necessary qualifications, staff, equipment or facilities to adequately serve the public; that some persons engaged in the businesses have made false and deceptive claims and advertisements to the public and have engaged in fraud and other illegal conduct; that certain citizens of this state have sustained financial losses as a result thereof; and that in some of the cases there has been no adequate means to prevent the conduct or protect the interests of the citizens of West Virginia. It is, therefore, declared to be the public policy of this state that the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, affects the general welfare of this state and its citizens; that persons without the necessary qualifications, staff, equipment or facilities to adequately serve the public, and persons not of good character or who have or are likely to attempt to misrepresent their product or engage in fraudulent or other illegal conduct should not engage in these businesses; and that the evils may best be prevented and the interests of the public best served by requiring persons in the businesses to meet the qualifications set forth in this article and to be licensed by the commissioner of motor vehicles as provided in this article.

(b) The Legislature further determines and finds that there exists a significant problem when a motor vehicle dealer goes out of business or engages in business practices that cause citizens or businesses of the affected community, as well as this state substantial financial loss. It is, therefore determined, that the creation of a dealer recovery fund is necessary as a remedial measure to allow both the state and the citizens of this state to recover any taxes which have not been properly remitted to the state and to provide financial relief to citizens, businesses and other motor vehicle dealers who have suffered financial harm through the failure of a motor vehicle dealer to properly fulfill
its responsibilities such as failure to properly release liens and
deliver clear title in motor vehicle transactions.

§17A-6-2a. Dealer recovery fund created.

(a) There is hereby created a special fund in the state
treasury which is to be designated the "dealer recovery fund."
The fund shall consist of certain moneys received from persons
engaged in the business of selling new or used motor vehicles,
new or used motorcycles, trailers, semi-trailers or recreational
vehicles or from grants, gifts, bequests or awards arising out of
the settlement or adjudication of a claim. The fund is not to be
treated by the auditor and treasurer as part of the general
revenue of the state. The fund is to be a special revolving fund
paid out upon order of the commissioner of motor vehicles
based on the recommendation of the dealer recovery fund
control board created in this section, solely for the purposes
specified in this section. The commissioner may use up to one
percent of funds from the dealer recovery fund for the adminis-
trative expenses of operating the dealer recovery fund program.

(b) The dealer recovery fund control board shall consist of
the commissioner of motor vehicles or his or her designee, the
attorney general's designee representing the office of consumer
protection and one representative selected by the motor vehicle
dealer's advisory board. The commissioner of motor vehicles
or his or her designee shall serve as chair and the board shall
meet at least once a year during the month of July, and as
required by the commissioner. The commissioner may propose
rules for promulgation in accordance with article three, chapter
twenty-nine-a of this code that are necessary to effectuate the
provisions of this section. The commissioner may employ the
necessary staff needed to operate the program. The board may
prorate the amount paid on claims when the amount of valid
claims submitted would exceed thirty-three percent of the fund.
However, claims presented by the division of motor vehicles for
taxes and fees shall be paid in full. The board may purchase insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

(c) Every applicant for either an original dealer license or renewal of an existing dealer license of the type enumerated in subsection (a) of this section shall pay, in addition to any other license fee, an annual dealer recovery fund fee of one hundred fifty dollars. All dealers shall continue to maintain a surety bond as required by this article and the dealer recovery fund payment unless exempt by one of the following requirements:

(1) Any dealer who, for the three years immediately preceding assessment of the fees, has not had a claim paid against the bond or against the dealer recovery fund, whose license has not been suspended or revoked and who has not been assessed any civil penalties is not required to continue to keep the bond required by this article. However, no dealer can submit a claim against the fund unless it has contributed to the fund for at least three years.

(2) If the dealer recovery fund reaches or exceeds the amount of three million dollars as of the first day of July of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is exempt from payment of the annual dealer recovery fund fee. However, if the fund should, as of the first day of April of any year, drop below three million dollars, all dealers, regardless of any previous exemption shall pay the annual dealer recovery fee of one hundred fifty dollars. The exemption prescribed in subdivision (1) of this subsection remains in effect regardless of the status of the fund.

(d) The dealer recovery fund control board may consider payment only after any dealer surety bond required pursuant to the provisions of section four of this article has been exhausted.
(e) When the fund reaches two hundred fifty thousand dollars, the board shall consider claims for payment.

(f) Claims against the fund are not to be made for any act or omission which occurred prior to the first day of July, two thousand two.

(g) Claims for payment shall be submitted within six months of the date of sale or the date the division is made aware of the claim.

(h) The board shall pay claims in the following order:

(1) Claims submitted by the division of motor vehicles for unpaid taxes and fees;

(2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was a condition of the purchase agreement;

(3) Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien; or

(4) Claims submitted by a retail purchaser of third party goods or services from a dealer covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods or services.

(i) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to the loan value of the vehicle as of the date of the sale or other transaction as shown by a generally accepted motor vehicle value guide. The maximum claim against the fund for any new or
unused vehicle is the amount of the invoice less any amounts
rebated or to be rebated to the dealer from the manufacturer.
Payment is only to be made to a secured party who agrees to
accept payment from the dealer recovery fund and who accepts
the payment in full settlement of any claims, and who releases
the lien and the title, if applicable, prior to receiving payment.
Any dealer who agrees to accept payment from the dealer
recovery fund shall release the title prior to receiving payment.

(j) On payment by the board to a claimant from the fund,
the board shall immediately notify the licensee against whom
a claim was paid and request full reimbursement within thirty
days of notification. If a dealer fails to fully reimburse the
board within the specified period of time, the commissioner
shall immediately and without prior hearing revoke the dealer
license of dealer against whom the claim was paid. No applic-
cant with an unpaid claim is eligible for renewal or relicensure
until the full amount of the reimbursement plus interest as
determined by the board is paid to the fund. Nothing in this
section shall limit the authority of the commissioner to suspend,
revoke or levy civil penalties against a dealer, nor shall full
repayment of the amount owed to the fund necessarily nullify
or modify the effect of any action by the commissioner.

(k) Nothing in this section shall limit the right for any
person to seek relief though civil action against any other
person.

(l) The provisions of this section do not apply to those class
DTR dealers in the business of selling manufactured housing
and covered by the state manufactured housing recovery fund
established by the division of labor pursuant to a legislative
rule.

§17A-6-4. Application for license certificate; insurance; bonds;
investigation; information confidential.
(a) Application for any license certificate required by section three of this article shall be made on a form prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of the vehicle or vehicles, subject to minimum limits, exclusive of interest and costs, with respect to each vehicle, as follows: Twenty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, forty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, the application shall disclose, but not be limited to, the following:

(1) The type of business for which a license certificate is sought;

(2) If the applicant is an individual, the full name and address of the applicant and any trade name under which he or she will engage in the business;

(3) If the applicant is a copartnership, the full name and address of each partner in the copartnership, the name of the copartnership, its post-office address and any trade name under which it will engage in the business;
If the applicant is a corporation, its name, the state of its incorporation, its post-office address and the full name and address of each officer and director of the corporation;

(5) The location of each place in this state at which the applicant will engage in the business and whether the business is owned or leased by the applicant;

(6) Whether the applicant, any partner, officer or director of the business has previously engaged in the business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;

(7) Whether the applicant, any partner, officer, director or employer of the business has previously applied for a license certificate under the provisions of this article or a similar license certificate in this or any other state, and if so, whether the license certificate was issued or refused and, if issued, whether it was ever suspended or revoked;

(8) A statement of previous general business experience and the past history of the applicant; and

(9) Any other information that the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of the business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, the application shall, in addition to the matters outlined in subsection (b) of this section disclose:
(1) The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and

(2) The exact number of new and used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no new and used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of new and used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, the application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail and wholesale by the applicant or his or her predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail and wholesale during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker/dismantler/rebuilder, the application shall disclose any information that the commissioner may reasonably require.

(f) The application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be. Except as provided in section two-a of this article, the application shall be accompanied by a bond of the
applicant in the penal sum of ten thousand dollars, in the form
prescribed by the commissioner, conditioned that the applicant
will not in the conduct of his or her business practice any fraud
which, or make any fraudulent representation which, shall cause
a financial loss to any purchaser, seller or financial institution
or agency, or the state of West Virginia, with a corporate surety
thereon authorized to do business in this state. The bond shall
be effective as of the date on which the license certificate
sought is issued.

(g) Upon receipt of any fully completed application,

together with any bond required under subsection (f) of this
section, the certificate of insurance as required in subsection (a)
of this section and the appropriate fee provided for in section
ten of this article, the commissioner may conduct any investiga-
tion he or she considers necessary to determine the accuracy of
any statements contained in the application and the existence of
any other facts which he or she considers relevant in consider-
ing the application. To facilitate the investigation, the commis-
sioner may withhold issuance or refusal of the license certifi-
cate for a period not to exceed twenty days.

(h) Any application for a license certificate under the
provisions of this article and any information submitted with
the application is confidential for the use of the division. No
person shall divulge any information contained in any applica-
tion or any information submitted with the application except
in response to a valid subpoena or subpoena duces tecum issued
pursuant to law.

§17A-6-6. Refusal or issuance of license certificate; license certifi-
cate not transferable.

(a) Upon the basis of the application and all other informa-
tion before him or her, the commissioner shall make and enter
an order denying the application for a license certificate and
refusing the license certificate sought. The denial and refusal are final and conclusive unless an appeal is taken in accordance with the provisions of section twenty-one of this article, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a copartnership, or the officers and directors, if a corporation):

1. Has failed to furnish the required bond unless otherwise exempt under the provisions of section two-a of this article;

2. Has failed to furnish the required certificate of insurance;

3. Has knowingly made false statement of a material fact in his or her application;

4. Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

5. Has been convicted of a felony: Provided, That upon appeal, the motor vehicle dealers advisory board established pursuant to the provisions of section eighteen-a of this article may grant as exemption of this restriction if the felony did not involve financial matters, the motor vehicle industry or matters of moral turpitude.

6. So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state or any other state or jurisdiction;

7. Does not or will not have or maintain at each place of business (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in that section;

8. Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor
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vehicle dealer, house trailer dealer, trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
or dismantler in this state or any other state or jurisdiction;

(9) Has done any act or has failed or refused to perform any
duty for which the license certificate sought could be suspended
or revoked were it then issued and outstanding;

(10) Is not age eighteen years or older;

(11) Is delinquent in the payment of any taxes owed to the
United States, the state of West Virginia or any political
subdivision thereof;

(12) Has been denied a license in another state or has been
the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it
had been committed in this state, would be grounds for denial
and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this
state or any other state; or

(15) Has failed to reimburse when ordered, any claim
against the dealer recovery fund as prescribed in section two-a
of this article.

Otherwise, the commissioner shall issue to the applicant the
appropriate license certificate which entitles the licensee to
engage in the business of new motor vehicle dealer, used motor
vehicle dealer, house trailer dealer, trailer dealer, recreational
vehicle dealer, motorcycle dealer, used parts dealer, or wrecker
or dismantler, as the case may be, during the period, unless
sooner suspended or revoked, for which the license certificate
is issued.
(b) A license certificate issued in accordance with the provisions of this article is not transferable.

§17A-6-8. Form and display of license certificate or certified copy thereof; obtaining certified copy of license certificate; bond.

(a) The commissioner shall prescribe the form of license certificate for each type of business required to be licensed under the provisions of this article, and each license certificate shall have printed on it the seal of the division and any other information prescribed by the commissioner, and shall show as to any licensee the location of each place of business of the licensee. The license certificates for each type of business shall show the year for which issued and shall be serially numbered. The license certificate shall be delivered or mailed to the licensee.

(b) When a licensee conducts his or her licensed business at more than one location, he or she shall, upon application therefor, obtain from the commissioner for each place of business one certified copy of his or her license certificate. A fee of one dollar shall be paid for each certified copy. Each licensee shall keep his or her license certificate or certified copy of the license certificate conspicuously posted at each place of business.

(c) A licensee shall keep the bond, unless otherwise exempt by section two-a of this article, and liability insurance required by section four of this article in full force and effect at all times. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on the bond shall have the right to cancel the bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.
(d) In the event of the loss or destruction of a license certificate or a certified copy of a license certificate, the licensee shall immediately make application for a certified copy of the license certificate. A fee of one dollar shall be required for any certified copy.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board any information that enables it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions, if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules authorized in section nine, article two of this chapter and promulgated to implement the provisions of this article by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code;
(2) Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business, (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in section one of this article;

(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or other person, in the conduct of the licensee’s business;

(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;
(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled;

(18) Has misrepresented a customer's credit or financial status to obtain financing; or

(19) Has failed to reimburse when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused, or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(b) Whenever a licensee fails or refuses to keep the bond, unless exempt from the requirement pursuant to section two-a of this article, or liability insurance required by section four of this article in full force and effect, the commissioner shall
automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner, the commissioner shall vacate the suspension.

(c) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.

CHAPTER 204

(H. B. 2594 — By Delegates Douglas, Kuhn, Butcher, Hatfield, Manchin, Prunty and Leggett)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article six, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen-b, relating to continuing the motor vehicle dealers advisory board.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-18a. Motor vehicle dealers advisory board.
§17A-6-18b. Continuation of board.

§17A-6-18a. Motor vehicle dealers advisory board.

(a) There is created a motor vehicle dealers advisory board to assist and to advise the commissioner on the administration of laws regulating the motor vehicle industry; to work with the commissioner in developing new laws, rules or policies regarding the motor vehicle industry; and to give the commissioner such further advice and assistance as he or she may from time to time require.

The board shall consist of nine members and the commissioner of motor vehicles, or his or her representative, who shall be an ex officio member. Two members shall represent new motor vehicle dealers, with one of these two members representing dealers that sell less than one hundred new vehicles per year; one member shall represent used motor vehicle dealers; one member shall represent wrecker/dismantler/rebuilders; one member shall represent automobile auctions; one member shall represent recreational dealers; one member shall represent the West Virginia attorney general’s office; and two members shall represent consumers. All of the representatives, except the attorney general representative who shall be designated by the attorney general, shall be appointed by the governor with the
advice and consent of the Senate, with no more than five representatives being from the same political party. The appointed members shall serve without compensation.

The terms of the board members shall be for three years commencing the first day of July, one thousand nine hundred ninety-six. Two members shall be appointed to serve one year, two members shall be appointed to serve two years and five members shall be appointed to serve three years. Successive appointments shall be for the full three years. The attorney general representative shall serve continuously.

The board shall meet at least four times annually and at the call of the commissioner.

(b) The commissioner shall consult with the board before he or she takes any disciplinary action against a dealer, an automobile auction or a license service to revoke, or suspend a license, place the licensee on probation or levy a civil penalty, unless the commissioner determines that the consultation would endanger a criminal investigation.

(c) The commissioner may consult with the board by mail, by facsimile, by telephone or at a meeting of the board, but the commissioner is not bound by the recommendations of the board. The commissioner shall give members seven days from the date of a mailing or other notification to respond to proposed actions, except in those instances when the commissioner determines that the delay in acting creates a serious danger to the public’s health or safety or would unduly compromise the effectiveness of the action.

(d) No action taken by the commissioner shall be subject to challenge or rendered invalid on account of his or her failure to consult with the board.

§17A-6-18b. 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 motor vehicle dealers advisory board should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the motor vehicle dealers advisory board shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished by act of the Legislature.

CHAPTER 205

(Com. Sub. for H. B. 2974 — By Delegates Butcher, Douglas and Kuhn)

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

AN ACT to amend and reenact section three-b, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections seven, eight and nine, article one-d, chapter seventeen-b; to further amend said article by adding thereto a new section, designated section ten; and to amend and reenact section eight, article two of said chapter, all relating to motorcycles; increasing fees; terminating the motorcycle safety and education committee; creating the motorcycle safety awareness board; membership of the board; and termination date of the board.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of 
Title, and Antitheft Provisions.
17B. Motor Vehicle Driver’s Licenses.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, 
REGISTRATION, CERTIFICATE OF TITLE, AND 
ANTITHEFT PROVISIONS.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3b. Motorcycle safety fee.

Upon the annual registration of any motorcycle, the 
division shall collect a motorcycle safety fee of six dollars and 
fifty cents, in addition to the registration fee specified in section 
three of this article. The division shall deposit five dollars and 
fifty cents of the motorcycle safety fee into the state treasury 
and credit the moneys to the motorcycle safety fund. The 
division shall deposit the remaining one dollar of the motorcy-

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

Article

1D. Motorcycle Safety Education.
2. Issuance of License, Expiration and Renewal.

ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.
§17B-1D-7. Motorcycle safety account.

(a) There is hereby created a special fund in the state treasury which shall be designated the "motorcycle safety fund". The fund shall consist of all moneys received from motorcycle driver licensing fees except instruction permit fees, five dollars and fifty cents of the moneys received from the motorcycle safety fee assessed with each motorcycle registration under section three-b, article ten, chapter seventeen-a of this code and any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor and treasurer as part of the general revenue of the state. The fund shall be a special revolving fund to be used and paid out upon order of the commissioner of motor vehicles, based upon the recommendations of the motorcycle safety awareness board created under section eight, article one-d, chapter seventeen-b of this code, solely for the purposes specified in this chapter.

(b) The fund shall be used by the division of motor vehicles to defray the cost of implementing and administering the motorcycle safety education program established in section two of this article.

§17B-1D-8. Motorcycle safety and education committee terminated; motorcycle safety awareness board created.

(a) The motorcycle safety and education committee created pursuant to subsection (f), of section forty-four, article fifteen, chapter seventeen-c of this code will terminate on the thirtieth day of June, two thousand one.
(b) Effective the first day of July, two thousand one, there is created an eight member motorcycle safety awareness board consisting of four ex officio members and four non-governmental members. The ex officio members are the motorcycle safety program coordinator, as appointed under section two of this article, or a designee; the superintendent of the state police or a designee; the commissioner of the bureau of public health or a designee; and the commissioner of the division of tourism or a designee. The four non-governmental members are a licensed motorcycle operator who will be appointed for an initial term of one year; a member of American bikers aimed toward education (ABATE) or the West Virginia confederation of motorcycle clubs who will be appointed for an initial term of one year; a licensed insurance agent who has a valid motorcycle endorsement who will be appointed for an initial term of two years; and, an owner of a motorcycle dealership or supplier of aftermarket nonfranchised motorcycle supplies who will be appointed for an initial term of three years. The motorcycle safety program coordinator shall serve as chair of the board. The non-governmental members will be appointed by the governor with the advice and consent of the Senate, and will serve without compensation. The terms will be for three years, except for the initial appointments which will be staggered according to the provisions of this article. Members may be reappointed to the board. Any nongovernmental member who is absent without good cause from three consecutive meetings of the board may be removed from the board and a new member appointed by the governor.

(c) The board may recommend to the superintendent of the state police types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The board may make recommendations to the commissioner of motor vehicles regarding the use of the moneys in the motorcycle safety fund created under section seven of this article. The board shall report annually to the Legislature on or before the first day of each regular legislative session.
§17B-1D-9. Authority to promulgate rules.

1 The division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, as are necessary to carry out the provisions of this article.

§17B-1D-10. Continuation of motorcycle safety awareness board.

1 The motorcycle safety awareness board shall terminate on 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 that article.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver’s license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee shall be written with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee: Provided, that the commissioner may issue upon proper documentation, a duplicate or renewed valid without-photo license for resident applicants temporarily out of state. A driver’s license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.
(b) The fee for the issuance of a Class E driver’s license is two dollars and fifty cents per year for each year the license is issued to be valid. The fee for issuance of a Class D driver’s license is six dollars and twenty-five cents per year for each year the license is issued to be valid. An additional fee of fifty cents shall be collected from the applicant at the time of original issuance or each renewal and the additional fee shall be deposited in the “combined voter registration and driver’s licensing fund,” established pursuant to the provisions of section twelve, article two, chapter three of this code. The additional fee for adding a motorcycle endorsement to a driver’s license is one dollar per year for each year the license is issued.

The fee for issuance of a motorcycle-only license is two dollars and fifty cents for each year for which the motorcycle license is to be valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the state treasury known as the motorcycle safety fund as established in section seven, article one-d of this chapter.

(c) On or after the first day of January, two thousand one, the fee for the issuance of either the level one or level two graduated driver’s license as prescribed in section three-a of this article is five dollars.

CHAPTER 206

(Com. Sub. for H. B. 2856 — By Delegates Webster, Manuel, Amores, Craig, Smirl, Givens and Hrutkay)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty, relating to prohibiting the installation of any materials other than a previously undeployed air bag; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.

§17C-15-50. Deployed restraint systems resale or reinstallation prohibited.

A person who knowingly installs or reinstalls any object in lieu of an air bag or anything other than a not previously deployed air bag that was designed in accordance with federal safety regulations for the make, model and year of vehicle, as part of a vehicle inflatable restraint system, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

CHAPTER 207

(S. B. 605 — By Senators Wooton, Caldwell, Hunter, Redd, Ross, Snyder and Deem)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section three, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to improver’s liens on motor vehicles; providing that secured party must pay improver upon redemption or other disposition of repossessed vehicle in certain circumstances; providing certain limitations in amount improver may recover; providing for certain disposition of remaining proceeds after disposition of vehicle by secured party; and expressing that the provisions will not limit rights under certain insurance recovery.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

§38-11-3. Improver’s, storer’s or transporter’s lien on personal property and animals.

A person who, while in possession thereof, makes, alters, repairs, stores, transports or in any way enhances the value of an article of personal property, or boards, pastures, feeds, trains, improves or transports any animal shall have a lien upon such article or animal while lawfully in the possession thereof, for the charges agreed upon, or, if no charges be agreed upon, then for his just and reasonable charges for the work done or the board or storage or transportation furnished, to the extent and in the manner provided for in section fourteen of this article, and may retain possession thereof until such charges are paid. Such lien shall be good against the person who deposited the property with the lienor and against any other person by whose authority or with whose consent the property was deposited: Provided, That, notwithstanding the provisions of this section and section two of this article, if a person possessing an
improver’s lien on a motor vehicle releases that vehicle to a secured party taking possession after default, the secured party shall, upon redemption of the vehicle by the debtor or resale or other disposition by the secured party, pay to the improver the lesser of: (i) The actual cost of improvements as measured by the cost of inventory and labor; or (ii) fifteen hundred dollars:

Provided, however, That improvements shall not include nonstock changes in the appearance or performance of the vehicle: Provided further, That if after satisfaction of any prior perfected lien, proceeds remain from the sale, redemption or other disposition of the vehicle by the secured party, such proceeds shall be used to satisfy any balance remaining on the improver’s lien: And provided further, That nothing herein shall be construed as impairing or affecting the secured party’s right to recover under any insurance policy covering the vehicle. If two or more articles of personal property are made, altered, repaired, stored, transported or enhanced in value as aforesaid, or two or more animals are boarded, pastured, fed, trained, improved or transported as aforesaid, under one contract or agreement, any one or more of such articles or animals may be held under the lien, hereinbefore mentioned, for all of the charges upon all such articles included in such contract or agreement.

CHAPTER 208


[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]
AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-one, relating to authorizing rainy day funds for counties known as a financial stabilization fund; naming act; providing findings of the Legislature; authorizing county commissions to create financial stabilization funds; specifying the receipts available for the fund; establishing cap of thirty percent for the fund; authorizing investment of funds; and specifying authorized expenditures from the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.

§7-21-1. Short title.

This article may be known and cited as the “County Financial Stabilization Fund Act”.

§7-21-2. Findings and declarations.

The Legislature finds and declares that:

(1) County government should maintain a prudent level of financial resources to try to protect against reducing service levels or raising taxes and fees because of temporary revenue shortfalls, unpredicted one-time expenditures or emergency situations; and
(2) The creation, maintenance and use of a financial stabilization fund will provide counties with assistance to meet these challenges, as well as enable them to improve their financial management and practices.

§7-21-3. Budget stabilization fund; creation; appropriation; maximum.

(a) A county commission may create a “financial stabilization fund” by a majority vote of the members. The fund may receive appropriations, gifts, grants and any other funds made available.

(b) The county commission may appropriate a sum to the fund from any surplus in the general fund at the end of each fiscal year or from any other money available.

(c) The amount of money in the fund may not exceed thirty percent of the county’s most recent general fund budget, as originally adopted. When the fund exceeds the thirty percent, the county commission shall transfer the excess to any fund it considers appropriate.

§7-21-4. Fund investment; usage.

(a) The county commission may invest the money in the fund as it considers appropriate, with the earnings retained by the fund.

(b) The county commission may appropriate money in the financial stabilization fund upon a majority vote for any of the following purposes:

(1) To cover a general fund shortfall; or

(2) Any other purpose the commission considers appropriate.
CHAPTER 209

(Com. Sub. for S. B. 200 — By Senators Snyder, Burnette, Oliverio, Ross, Deem and McKenzie)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a new municipality; establishing the requirements for creation of a new municipality; prohibiting creation of a new municipality from an incorporated area; establishing population density requirements; prohibiting incorporation of an area that is disproportionate to the number of inhabitants; requiring proponents of new municipality to provide the county commission with certain information, including a detailed map of the area, plans for providing municipal services and impact of incorporation on fire protection and insurance rates; prohibiting incorporation of new municipality if it would be in close proximity to an existing municipality and the existing municipality is capable of more effectively or efficiently providing services to the area; prohibiting incorporation of a new municipality if it is not in the best interest of the county as a whole; and providing that it is within the discretion of the county commission, based on certain criteria, to determine the area to be included or excluded in the new municipality.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. CREATION OF MUNICIPALITIES.

Part I. General.

§8-2-1. Requirements for incorporation; size and character of territory; population.

(a) Any part of a county or counties may be incorporated as a city, depending upon the population, either as a Class I, Class II or Class III city, or as a Class IV town or village, as classified in section three, article one of this chapter if the area proposed for incorporation meets the following conditions:

1. The area is not currently within any municipality urban in character;

2. For areas that are more than one square mile there must be an average of not less than five hundred inhabitants or freeholders per square mile;

3. For areas less than one square mile there must be at least one hundred inhabitants or freeholders;

4. The total area to be incorporated must not include an amount of territory disproportionate to its number of inhabitants; and

5. The proponents of incorporation shall provide to the county commission a proposal which shall include:

   (A) A map or maps of the area to be incorporated showing the following information:

   (i) The present boundaries of nearby municipalities and the proposed boundaries of the area to be incorporated; and
(ii) The proposed extensions of water mains and sewer outfalls to serve the incorporated area, if such utilities are to be operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(B) A statement that the area to be incorporated meets the applicable requirements of this article.

(C) A statement setting forth the plans of the proposed municipality for providing to the area to be incorporated each major municipal service and whether the service will be provided by the municipality or by contract with a public or private entity. The plan shall:

(i) Provide for police protection, fire protection, solid waste collection, public water and sewer services and street maintenance services to the area to be incorporated on the date of incorporation;

(ii) A statement of the impact of the incorporation on any rural fire department providing service in the area to be incorporated and a statement of the impact of the incorporation on fire protection and fire insurance rates in the area to be incorporated; and

(iii) A statement showing how the proposed incorporation will affect the proposed municipalities finances and services.

(b) The creation of any new municipality is prohibited if:

(1) The area to be incorporated is within close proximity to an existing municipality and the existing municipality is capable of more effectively and efficiently providing services to the area; or
(2) The creation of a new municipality is not in the best interest of the county as a whole.

(c) It is within the reasonable discretion of the county commission to determine the exact area or portions thereof to be included or excluded in the new municipality, considering the following:

(1) The topography of the area;

(2) The benefits of incorporation;

(3) The amount of uninhabited land required for parks and recreational use; and

(4) Normal growth and development and the present and possible future uses so as to prevent hardships and inequities.

CHAPTER 210

(Com. Sub. for S. B. 202 — By Senators Snyder, Burnette, Oliverio, McKenzie, Kessler and Edgel)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
annexations; modifying eligibility to participate in annexation election as a qualified voter; allowing firms and corporations to sign petitions and vote on annexation; revising procedure for annexation by minor boundary adjustment; altering certain population requirements for annexations; revising areas eligible to be annexed by minor boundary adjustment; altering requirements and responsibilities of county commissions' review of annexation by minor boundary adjustment; modifying application requirements for annexation by minor boundary adjustment; requiring municipalities to provide an analysis of impact of proposed annexation on businesses and the municipality; establishing minimum criteria to be considered by county commission when making a determination regarding an annexation by minor boundary adjustment; allowing modification of a denied annexation application to be resubmitted to the county commission; requiring explanation of decision by county commission; and providing for judicial review of annexation decisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ANNEXATION.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.
§8-6-2. Petition for annexation.
§8-6-4. Annexation without an election.
§8-6-5. Annexation by minor boundary adjustment.

§8-6-1. Annexation of unincorporated territory.
(a) Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.
MUNICIPALITIES

§8-6-2. Petition for annexation.

(a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.

(b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.

(c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be taken upon the proposed annexation on a date and at a time and place to be named in the order, not less than twenty nor more than thirty days from the date thereof.

(d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of such additional territory whether they...
reside or have a place of business therein or not, to be taken
upon the question on the same day at some convenient place in
or near the additional territory.

(e) The governing body shall cause the order for the
election to be published, at the cost of the municipality, as a
Class II-0 legal advertisement in compliance with the provi-
sions of article three, chapter fifty-nine of this code. The
publication area is the municipality and the additional territory.
The first publication must be at least fourteen days prior to the
date upon which the vote is to be taken. The order for the
election shall contain an accurate description by metes and
bounds of the additional territory proposed to be annexed to the
corporate limits by the proposed change, a summary of the
municipality’s plan for providing services to the additional
territory and, if practicable, shall also contain a popular
description of the additional territory.

(f) The election shall be held, superintended and conducted
and the results thereof ascertained, certified, returned and
canvassed in the same manner by the same individuals as
elections for municipal officers. The election is reviewable by
the circuit court of the county in which the municipality or the
major portion thereof, including the area proposed to be
annexed, is located. The order may be reviewed by the circuit
court as an order of a county commission ordering an election
may be reviewed under section sixteen, article five of this
chapter.

(g) The ballots, or ballot labels where voting machines are
used, shall have written or printed on them the words:

☐ For Annexation

☐ Against Annexation
(h) Any freeholder which is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by such firm or corporation.

(i) An individual who is a qualified voter and freeholder of the municipality or the additional territory shall be entitled to vote only once.

(j) For purposes of this section, the term "qualified voter of the additional territory" includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may vote by its manager, president, or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to vote in the annexation election.

(k) When an election is held in any municipality in accordance with the provisions of this section, another election relating to the same proposed change or any part thereof shall not be held for a period of one year.

(l) If a majority of all of the legal votes cast both in the municipality and in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.

(a) The governing body of a municipality may, by ordinance, provide for the annexation of additional territory without ordering a vote on the question if: (1) A majority of the qualified voters of the additional territory file with the governing body a petition to be annexed; and (2) a majority of all
freeholders of the additional territory, whether they reside or have a place of business therein or not, file with the governing body a petition to be annexed.

(b) For purposes of this section, the term “qualified voter of the additional territory” includes firms and corporations in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may sign a petition by its manager, president or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to sign a petition relating to the proposed annexation.

(c) The determination that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed is located, upon certiorari to the governing body in accordance with the provisions of article three, chapter fifty-three of this code.

(d) A qualified voter of the additional territory who is also a freeholder of the additional territory may join only one petition of the additional territory.

(e) It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory. In determining the total number of eligible petitioners, in each category, a freeholder or any other entity that is a freeholder shall be limited to one signature on a petition as provided in this section. There shall be allowed only one signature on a petition per parcel of property and any freehold interest that is held by more than one individual or entity shall be allowed to sign a petition only upon
the approval by the majority of the individuals or entities that
have an interest in the parcel of property.

(f) If all of the eligible petitioners are qualified voters, only
a voters' petition is required.

(g) If satisfied that the petition is sufficient in every respect,
the governing body shall enter that fact upon its journal and
forward a certificate to that effect to the county commission of
the county wherein the municipality or the major portion of the
territory thereof, including the additional territory, is located.
The county commission shall thereupon enter an order as
described in the immediately preceding section of this article.
After the date of the order, the corporate limits of the munici-
pality shall be as set forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

(a) In the event a municipality desires to increase its
corporate limits by making a minor boundary adjustment, the
governing body of the municipality may apply to the county
commission of the county wherein the municipality or the
major portion of the territory thereof, including the territory to
be annexed, is located for permission to effect annexation by
minor boundary adjustment. The municipality shall pay the
costs of all proceedings before the commission.

(b) In addition to any other annexation configuration, a
municipality may incorporate by minor boundary adjustment:
(i) Territory that consists of a street or highway as defined in
section thirty-five, article one, chapter seventeen-c of this code
and one or more freeholders; or (ii) territory that consists of a
street or highway as defined in section thirty-five, article one,
chapter seventeen-c of this code which does not include a
freeholder but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An accurate map showing the metes and bounds of the additional territory;

(3) A statement setting forth the municipality’s plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

(4) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(5) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(6) A statement of how the proposed annexation will affect the municipality’s finances and services; and

(7) A statement that the proposed annexation meets the requirements of this section.
(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under section two or four of this article.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in section two of this article. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

(f) In making its final decision on an application for annexation by minor boundary adjustment, the county commission shall, at a minimum, consider the following factors:

1. Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

2. Whether the proposed annexation is limited solely to a division of highways right-of-way or whether the division of highways holds title to the property in fee;
76 (3) Whether affected parties of the territory to be annexed
77 oppose or support the proposed annexation. For purposes of this
78 section, “affected parties” means freeholders, firms, corpora-
79 tions and qualified voters in the territory proposed for annex-
80 ation and in the municipality and a freeholder whose property
81 abuts a street or highway, as defined in section thirty-five,
82 article one, chapter seventeen-c of this code, when: (i) The
83 street or highway is being annexed to provide emergency
84 services; or (ii) the annexation includes one or more freeholders
85 at the end of the street or highway proposed for annexation;

86 (4) Whether the proposed annexation consists of a street or
87 highway as defined in section thirty-five, article one, chapter
88 seventeen-c of this code and one or more freeholders;

89 (5) Whether the proposed annexation consists of a street or
90 highway as defined in section thirty-five, article one, chapter
91 seventeen-c of this code which does not include a freeholder but
92 which is necessary for the provision of emergency services in
93 the territory being annexed;

94 (6) Whether another municipality has made application to
95 annex the same or substantially the same territory; and

96 (7) Whether the proposed annexation is in the best interest
97 of the county as a whole.

98 (g) If the county commission denies the application for
99 annexation by minor boundary adjustment, the commission may
100 allow the municipality to modify the proposed annexation to
101 meet the commissions objections. The commission must order
102 another public hearing if significant modifications are pro-
103 posed.

104 (h) The final order of the commission shall include the
105 reasons for the grant or denial of the application.
(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen, article five of this chapter.

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CHAPTER 211

(S. B. 555 — By Senators Ross, Caldwell, Kessler, Minard and Redd)

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

AN ACT to amend and reenact section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the powers, duties and authority of municipalities; authorizing municipalities and private solid waste motor carriers to negotiate an agreement for continued private solid waste collection services in an annexed area; and limiting the agreement to a period of no more than three years.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

1. To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any such permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any such airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time, place and purpose of such public hearing has been 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 publica-
tion shall be the municipality: Provided, That any such permit
so granted shall automatically cease and terminate in the event
of abandonment and nonuse thereof for the purposes intended
for a period of ninety days and all rights therein or thereto shall
revert to such municipality for its use and benefit;

(2) To provide for the opening and excavation of streets,
avenues, roads, alleys, ways, sidewalks, crosswalks and public
places belonging to the municipality and regulate the conditions
under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing
or permitting to remain on any street, avenue, road, alley, way,
sidewalk, square or other public place any glass, scrap iron,
nails, tacks, wire, other litter or any offensive matter or any-
thing likely to injure the feet of individuals or animals or the
tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys,
ways, sidewalks, crosswalks and public places belonging to the
municipality, including the naming or renaming thereof, and to
consult with local postal authorities, the division of highways
and the directors of county emergency communications centers
to assure uniform, nonduplicative addressing on a permanent
basis;

(5) To regulate the width of streets, avenues and roads and,
subject to the provisions of article eighteen of this chapter, to
order the sidewalks, footways and crosswalks to be paved,
repaved, curbed or recurbed and kept in good order, free and
clean, by the owners or occupants thereof or of the real property
next adjacent thereto;

(6) To establish, construct, alter, operate and maintain, or
discontinue, bridges, tunnels and ferries and approaches
thereto;
(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for such
use or consumption, or which may be contaminated or other-
wise unsanitary;

(13) To prevent injury or annoyance to the public or
individuals from anything dangerous, offensive or unwhole-
some:

(14) To regulate the keeping of gunpowder and other
combustibles;

(15) To make regulations guarding against danger or
damage by fire;

(16) To arrest, convict and punish any individual for
carrying about his person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false
knuckles or any other dangerous or other deadly weapon of like
kind or character;

(17) To arrest, convict and punish any person for importing,
printing, publishing, selling or distributing any pornographic
publications;

(18) To arrest, convict and punish any person for keeping
a house of ill fame, or for letting to another person any house or
other building for the purpose of being used or kept as a house
of ill fame, or for knowingly permitting any house owned by
him or under his control to be kept or used as a house of ill
fame, or for loafering, boarding or loitering in a house of ill fame
or frequenting same;

(19) To prevent and suppress conduct and practices which
are immoral, disorderly, lewd, obscene and indecent;

(20) To prevent the illegal sale of intoxicating liquors,
drinks, mixtures and preparations;
(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called "A, B, C" or "E, O" table, or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting such table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of such businesses;
(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in said articles), within or without the corporate limits of the municipality,
except that the municipality shall not erect any such system partly without the corporate limits of the municipality to serve persons already obtaining service from an existing system of the character proposed and where such system is by the municipality erected, or has heretofore been so erected, partly within and partly without the corporate limits of the municipality, the municipality shall have the right to lay and collect charges for service rendered to those served within and those served without the corporate limits of the municipality and to prevent injury to such system or the pollution of the water thereof and its maintenance in a healthful condition for public use within the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to any such system, waterworks or sewage treatment and disposal works, as aforesaid, subject to all of the pertinent provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate and regulate markets and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold or for sale;

(36) To establish, construct, acquire, maintain and operate public buildings, municipal buildings or city halls, auditoriums, arenas, jails, juvenile detention centers or homes, motor vehicle parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip, maintain and operate recreational parks, playgrounds and other recreational facilities for public use and in this connection also to proceed in accordance with the provisions of article two, chapter ten of this code;
(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia board of health and state department of health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitariums and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon such terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect such authority, the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;
(46) Except as otherwise provided, to require and take such bonds from such officers, when deemed necessary, payable to the municipality, in its corporate name, with such sureties and in such penalty as the governing body may see fit, conditioned upon the faithful discharge of their duties;

(47) To require and take from such employees and contractors such bonds in such penalty, with such sureties and with such conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate such instrumentalities, other than free public schools, for the instruction, enlightenment, improvement, entertainment, recreation and welfare of the municipality’s inhabitants as the governing body may deem necessary or appropriate for the public interest;

(50) To create, maintain and operate a system for the enumeration, identification and registration, or either, of the inhabitants of the municipality and visitors thereto, or such classes thereof as may be deemed advisable;

(51) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(52) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;
(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund which shall not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which shall be set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from such fund for such purposes;

(56) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for such purposes; and

(57) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties shall not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations.

CHAPTER 212

(H. B. 2877 — By Delegates Staton, Amores, Trump, Fletcher and Browning)

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

AN ACT to amend and reenact sections one, five, eighteen, and twenty-one, article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to
amend and reenact sections one-a, one-b, two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and eighteen, article twenty of said chapter; to further amend said article by adding thereto two new sections, designated sections one-c and eleven-a; to amend and reenact sections one, two, three, nine, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-two-f, twenty-two-g and twenty-three-a, article thirteen, chapter sixteen of said code, all relating to establishment of stormwater systems within municipalities; municipal public works, stormwater systems and associated stormwater management programs, rates, fees and charges for stormwater services, termination of water service for combined systems for nonpayment of stormwater services, governmental entities subject to established rates, fees and charges for stormwater services, extraterritorial jurisdiction of municipalities, combined waterworks, sewerage and stormwater systems, acquisition thereof, extraterritorial powers, severance of combined systems, right of eminent domain, criteria for ordinance for combined system, bonds, revenue payable for bonds; liens of bondholders; power of municipalities to fix rates, fees and charges; "sinking funds," protection and enforcement of rights of bondholders, grants, loans and advances; alternative method for acquisition of combined system; acquisition and operation of stormwater works by sanitary boards or sanitary district, powers of sanitary board expanded to include stormwater works; rates, charges and fees for stormwater services; exception of bonds for stormwater works from taxation.

Be it enacted by the Legislature of West Virginia:

That sections one, five, eighteen, twenty-one, article sixteen, chapter eight be amended and reenacted; that sections one-a, one-b, two, three, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and eighteen, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections one-c and eleven-a; and that sections one, two, three, nine, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-two-f, twenty-two-g and
twenty-three-a, article thirteen, chapter sixteen be amended and reenacted, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article
16. Municipal Public Works; Revenue Bond Financing.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART I. DEFINITIONS; AUTHORIZATION OF MUNICIPAL PUBLIC WORKS.

§8-16-1. Definitions.
§8-16-5. Powers of board.
§8-16-18. Rates, fees or charges for services rendered by works.
§8-16-21. Governmental entities to pay established rates, fees or charges for services rendered to it or them.

§8-16-1. Definitions.

1 As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

3 (a) "Municipal public works" or "works" or "projects" means the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, libraries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, stormwater systems and associated stormwater management program, flood walls, culverts,
bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, build-ings, ramps, curb-line parking, meters and other facilities con-sidered necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), farms, dormitories, apartments and other housing facilities for the students and faculties of institutions of higher education; facili-ties providing housing for the elderly, including, but not limited to, life care facilities, congregate living facilities and adult resi-dential facilities, stadiums, gymnasiums, sports arenas, auditori-ums, public recreation centers, public recreation parks, swim-ning pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recourbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks, where works or projects will be made self-supporting, and the cost thereof, together with the interest thereon, will be returned within a reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments or charges other than taxation; and the terms shall also mean any works or project as a whole, and all integral parts thereof, including all necessary, appropria-te, useful, convenient or incidental appurtenances and equip-ment in connection with any one or more of the above.

(b) “Stormwater systems” means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management pro-gram. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping
49 stations. The term “stormwater systems” shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(c) “Stormwater management program” means those activities associated with the management, operation, maintenance and control of stormwater and stormwater systems, and shall include, but not be limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term “stormwater management program” shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

PART III. GENERAL POWERS AND AUTHORITY.

§8-16-5. Powers of board.

1 The board shall have plenary power and authority to take all steps and proceedings, and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient or incidental to the performance of its duties and the execution of its powers and authority under this article: Provided, That any contract or agreement relating to the financing, or the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, operation or maintenance of any such works, and any trust indenture with respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

12 The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other
employees as in its judgment may be necessary in the execution
of its powers and duties, and may fix their compensation, all of
whom shall do such work as the board may direct. All compen-
sation and expenses incurred in carrying out the provisions of
this article shall be paid solely from funds provided under the
authority of this article, and the board shall not exercise or carry
out any power or authority herein given it so as to bind said
board or any municipality beyond the extent to which money
shall have been, or may be provided under the authority of this
article.

No contract or agreement with any contractor or contractors
for labor or materials, or both, exceeding in amount the sum of
ten thousand dollars shall be made without advertising for bids,
which bids shall be publicly opened and an award made to the
lowest responsible bidder, with power and authority in the
board to reject any and all bids.

After the construction, reconstruction, establishment, acquisi-
tion, renovation or equipment of any such works, the board
shall maintain, operate, manage and control the same, and may
order and complete any improvements, extensions, enlarge-
ments, increase or repair (including replacements) of and to the
works that the board may consider expedient, if funds therefor
be available, or are made available, as provided in this article,
and shall establish rules for the use, maintenance and operation
of the works, and do all things necessary or expedient for the
successful operation thereof, and for stormwater systems and
associated stormwater management programs, those activities
which include, but are not limited to, stormwater and surface
runoff water quality improvement activities necessary to com-
ply with all federal and state requirements. All public ways or
public works damaged or destroyed by the board in carrying out
its authority under this article shall be restored or repaired by
the board and placed in their original condition, as nearly as
practicable, if requested so to do by proper authority, out of the
funds provided under the authority of this article.
PART VI. IMPOSITION OF RATES, FEES OR CHARGES.

§8-16-18. Rates, fees or charges for services rendered by works.

The governing body shall have plenary power and authority and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use and services rendered, or the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways, provided or afforded, by such works, to be paid by the person using the same, receiving the services thereof, or owning the property improved or protected thereby, and may readjust rates, fees or charges from time to time.

When two or more municipalities take joint action under the provisions of this article, the rates, fees or charges shall be established by each participating municipality, with the concurrence of the other participating municipality or municipalities as to the amount of the rates, fees or charges, and such rates, fees or charges may be the same with respect to each municipality, or they may be different.

Rates, fees or charges heretofore or hereafter established and maintained for the improvement or protection of property, not to include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways, provided or afforded by a municipal flood control system or flood walls, to be paid by the person owning the property improved or protected thereby, shall be collectible and enforceable from the time provided in any such ordinance, any provision of this or any other law to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are nearing completion and the governing body is reasonably assured that the works will be completed and placed in operation without unreasonable delay.
All rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expenses of repair (including replacements), maintenance and operation of the works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to the provisions of this section are considered the revenues of the works. No such rates, fees or charges shall be established until after a public hearing at which all the users of the works and owners of the property served, or to be served thereby, and others interested, shall have an opportunity to be heard concerning the proposed rates, fees or charges.

After introduction of the proposed ordinance fixing the rates, fees or charges and before the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publishing the same as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be such municipality or each such municipality, as the case may be. Said notice shall be published at least five days before the date fixed in such notice for the hearing, which hearing may be adjourned from time to time. No other or further notice to parties in interest shall be required.

After such hearing the ordinance establishing rates, fees or charges, either as originally proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of such works, and also in the office of the governing body or bodies, and shall be open to inspection by all parties in interest.

The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional class of users or property thereafter served which fall within the same class, without the necessity of any hearing or
notice. Any change or adjustment of rates, fees or charges may
be made in the same manner as such rates, fees or charges were
originally established as provided in this section. The aggregate
of the rates, fees or charges shall always be sufficient for the
expenses of repair (including replacements), maintenance and
operation, and for the sinking fund payments.

If any rate, fee or charge so established shall not be paid
within thirty days after the same is due, the amount thereof,
together with a penalty of ten percent and reasonable attorney’s
fees, may be recovered by the board in a civil action in the
name of the municipality or municipalities, and in the case of
rates, fees or charges due for services rendered, such rates, fees
or charges, if not paid when due, may, if the governing body so
provide in the ordinance provided for under section seven of
this article, constitute a lien upon the premises served by such
works, which lien may be foreclosed against such lot, parcel of
land or building so served, in accordance with the laws relating
to the foreclosure of liens on real property. Upon failure of any
person receiving any such service to pay for the same when
due, the board may discontinue such service without notice.

PART VIII. RATES, FEES OR CHARGES FOR MUNICIPALITIES.

§8-16-21. Governmental entities to pay established rates, fees or
charges for services rendered to it or them.

(a) The municipality or municipalities issuing such bonds
shall be subject to the same rates, fees or charges established as
provided in this article, or to rates, fees or charges established in
harmony therewith, for service rendered to the municipality or
municipalities and shall pay such rates, fees or charges, when
due, from corporate funds, and the same shall be considered to
be a part of the revenues of the works as defined in this article,
and may be applied as provided in this article, for the applica-
tion of such revenue.
(b) The municipality or municipalities and any county, state and federal government served by the services of the stormwater system shall be subject to the same rates, fees or charges established as provided in this article for stormwater services, or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity and shall pay such rates, fees or charges, when due, from corporate funds, and the same is considered to be a part of the revenues of the works as defined in this article, and may be applied as provided in this article, for the application of such revenue. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

ARTICLE 20. COMBINED SYSTEMS

§8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.
§8-20-1b. Cooperation with other governmental units.
§8-20-1c. Severance of combined system.
§8-20-2. Right of eminent domain; limitations.
§8-20-3. Ordinance describing project; contents.
§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
§8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.
§8-20-7. Lien of bondholders.
§8-20-8. Covenants with bondholders.
§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
§8-20-11. Discontinuance of water service for nonpayment of rates or charges.
§8-20-11a. Governmental entities subject to established rates.
§8-20-12. Use of revenues; sinking fund.
§8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.


§8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.

§8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.

(a) Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system either wholly within or partly within and partly without the corporate limits thereof under the provisions of this article, and any municipality owning and operating a waterworks and sewerage system, but not a stormwater system, may acquire, construct, establish and equip the stormwater system which it does not then own and operate, and such municipality may provide by ordinance that when such stormwater system shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system, sewerage system, and stormwater system, may by ordinance combine the same into a single undertaking under the provisions of this article. However, no municipality may acquire, construct, establish and equip or thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

(b) Any municipality which has combined its waterworks, sewerage system and stormwater systems under the provisions of this article, or pursuant to the provisions of any other law, may hereafter construct extensions, additions, betterments and
improvements to any of the systems, any combination thereof, or all of the waterworks, sewerage and stormwater systems of said combined waterworks, sewerage and stormwater system, and may finance the acquisition, construction, establishment and equipment thereof, or the construction or extensions, additions, betterments and improvements thereof by the issuance of revenue bonds under the provisions of this article.

(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer or stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality’s corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) “Stormwater system” means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams,
floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater system" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(2) "Combined waterworks, sewerage and stormwater system" means a waterworks, sewerage and stormwater system which a municipality determines by ordinance to operate in combination.

(3) "Combined system" means either a combined waterworks, sewerage and stormwater system, or a combined waterworks and sewerage system.

(4) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems, and shall include and not be limited to public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

§8-20-1b. Cooperation with other governmental units.

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the state of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with
§8-20-1c. Severance of combined system.

Any municipality which has combined its waterworks and sewerage systems or waterworks, sewerage and stormwater systems, under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined system into separate systems.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined system, or any part thereof, are outstanding, then the municipality must provide in said ordinance that the severance of the combined system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due
and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of the committee, board or commission, and the creation of other committees, boards or commissions as may be required by law.

§8-20-2. Right of eminent domain; limitations.

For the purpose of acquiring, constructing, establishing or extending any system within a combined system, or a combined system, or for the purpose of constructing any additions, betterments or improvements to any system within a combined system, or a combined system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any system within a combined system, or combined system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system may not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of the municipality a municipal waterworks system or a combined system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined system in the municipality or within the proposed extension of the system, unless, except in the case of a stormwater system, a certificate of public
convenience and necessity therefor shall have been issued by
the public service commission: Provided, however, That the
power of eminent domain provided in this section shall not
extend to highways, road and drainage easements, and/or storm-
water facilities constructed, owned and/or operated by the West
Virginia division of highways without the express agreement of
the commissioner of highways.

§8-20-3. Ordinance describing project; contents.

The governing body of any municipality availing itself of
the provisions of this article shall adopt an ordinance describing
in a general way the contemplated project. If it is intended to
include in the combined system any existing waterworks system
or any existing sewerage system, or both, or if applicable, any
existing stormwater system, or any of them, or all of them, the
ordinance shall provide that it or they be so included in the
combined system and shall describe in a general way such exist-
ing waterworks or sewerage system or both, or, if applicable,
any existing stormwater system, or any of them, or all of them,
to be included in the combined system. The ordinance shall
state the means provided for refunding any obligations unpaid
and outstanding payable solely from the revenues of any such
waterworks or sewerage system, or both, or if applicable, any
existing stormwater system, or any of them, or all of them. The
ordinance shall determine the period of usefulness of the con-
templated project.

If it is intended to acquire, construct, establish and equip a
combined system or any part thereof, or to construct extensions,
additions, betterments and improvements to either the water-
works system or the sewerage system of the combined system,
or both, or if applicable, any existing stormwater system, or any
of them, or all of them, the ordinance shall describe in a general
way the works or property or system to be acquired, con-
structed, established or equipped or the extensions, additions,
betterments and improvements to be constructed.
The ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with the bonds considered advisable. The ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any system within a combined system, or a combined system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to any of the systems of said combined system, or all of them, any such municipality may issue revenue bonds under the provisions of this article.

All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. The bonds may be in denomination or denominations, may be in such form, either coupon or registered, may carry registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may
contain other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

The bonds and the interest thereon, together with all properties and facilities of the municipality owned or used in connection with the combined system, and all the moneys, revenues and other income of such municipality derived from the combined system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Bonds may be sold in such manner as the governing body shall determine. If any bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost to the municipality of the proceeds of the bonds may not exceed thirteen percent per annum computed to maturity according to the standard table of bond values.

If the governing body of the municipality determines to sell any revenue bonds of such combined system for refunding purposes, the proceeds of the bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby.

In case any officer whose signature appears on the bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he or she had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. The bonds shall have all the qualities of negotiable instruments under the laws of this state.
Whenever a waterworks and sewerage system or stormwater system, if applicable, is included in a combined system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of the waterworks or the sewerage system or stormwater system, if applicable, or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article.

Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system, or stormwater system, if applicable, included in a combined system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier.

Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but each bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.
§8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness.

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined system, and the bonds may not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of the municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

§8-20-7. Lien of bondholders.

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. However, no lien may attach to any portion of any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five hereof. Any revenue bonds so issued in payment for an existing waterworks system shall for all purposes be regarded as partak-
§8-20-8. Covenants with bondholders.

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the state, for the security of said bonds, which any municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of the bonds as to:

(a) The purpose or purposes to which the proceeds of sale of bonds or the revenues derived from said combined system may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depository for any of the funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of rates, fees or charges for the use of the services and facilities of the combined system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of
such combined system, the payment of the principal of and
interest upon all bonds or other obligations payable from the
revenues of such combined system, and all reserve and other
funds required by the terms of the ordinance authorizing the
issuance of bonds;

(d) The transfer from the general funds of the municipality
to the account or accounts of the combined system of an amount
equal to the cost of furnishing the municipality or any of its
departments, boards or agencies with the services and facilities
of such combined system;

(e) Limitations or restrictions upon the issuance of addi-
tional bonds or other obligations payable from the revenues of
such combined system, and the rank or priority, as to lien and
source and security for payment from the revenues of such
combined system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other
obligations issued hereunder may be declared immediately due
and payable upon the happening of a default in the payment of
the principal of or interest thereon, or in the performance of any
covenant or agreement with bondholders, and the manner and
terms upon which defaults may be declared cured and the accel-
eration of the maturity of the bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and opera-
tion of such combined system and restrictions and limitations
upon expenditures for the purposes, and the manner of adop-
tion, modification, repeal or amendment thereof, including the
approval of the budgets by consulting engineers designated by
holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon the
combined system, or any part thereof, and the use and disposi-
tion of the proceeds of any insurance; and

Any municipality may enter into contracts or agreements with any persons for: (1) The repair, maintenance and operation and management of the facilities and properties of the combined system, or any part thereof; or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for the period of time and under terms and conditions as shall be agreed upon between the municipality and such persons. Any municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing the bonds, that the contracts or agreements shall be valid and binding upon the municipality as long as any of the bonds, or interest thereon, is outstanding and unpaid.
§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia division of highways except in accordance with chapter twenty-nine-a of this code.

Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish rates, fees or charges for such purpose. Separate rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or charges for the combined water and sewer services, and, if applicable, the stormwater services. Such rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance
and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall 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, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the
delinquent account, plus fees and costs, from its customer or
other responsible party, the municipality shall pay to the magis-
trate court the filing fees or other fees and costs which were
previously deferred.

(e) No municipality may foreclose upon the premises
served by it for delinquent rates, fees or charges for which a lien
is authorized by this section except through the bringing and
maintenance of a civil action for the purpose brought in the
circuit court of the county wherein the municipality lies. In
every such action, the court shall be required to make a finding
based upon the evidence and facts presented that the municipal-
ity had exhausted all other remedies for the collection of debts
with respect to such delinquencies prior to the bringing of the
action. In no event shall foreclosure procedures be instituted by
any municipality or on its behalf unless the delinquency had
been in existence or continued for a period of two years from
the date of the first delinquency for which foreclosure is being
sought.

§8-20-11. Discontinuance of water service for nonpayment of rates
or charges.

Any municipality shall also have plenary power and author-
ity, and may covenant with the holders of any bonds issued
hereunder, to shut off and discontinue the supplying of the wa-
ter service of the combined system for the nonpayment of the
rates, fees or charges for said water service or sewer service, or
both, or, if applicable, stormwater service, or any combination
thereof, or all of them.

§8-20-11a. Governmental entities subject to established rates.

The municipality and any county government, state govern-
ment and federal government served by the services of the com-
bined system shall be subject to the same rates, fees or charges
established in this article or to rates, fees or charges established
in harmony therewith, for service rendered to the governmental entity, and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be part of the revenue of the combined system as defined in this article, and be applied as provided in this article, for the application of such revenues. However, no rates, fees or charges for combined services or stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

§8-20-12. Use of revenues; sinking fund.

All revenues derived from the operation of any combined system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any bonds are issued shall pledge the revenues derived from the combined system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which the bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof.

Any municipality operating a combined system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from the combined system and the application of the same. At least once each year the municipality shall cause the accounts to be properly audited, and a report of the audit shall be open to the public for inspection at all reasonable times.

§8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates, fees or charges for services rendered by the combined system.

If there be default in the payment of the principal of or interest upon any of bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates, fees or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and the receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which the bonds have been issued or trust indenture, or both.

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

In no event shall any loan or temporary advance be a general obligation of the municipality and the loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.
§8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article: Provided, however, That no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

§8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.
(a) As an alternative to the procedure provided in this article, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by the governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

However, no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

(b) In the event that the waterworks or sewerage system or both, or if applicable, stormwater services, are in existence prior to the creation of the combined system, and the waterworks or sewerage system or both, and if applicable, stormwater services, are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this section is to be followed with respect to the supervision and control of the combined system, the governing body may by ordinance, after the creation of the combined system, provide:

(1) The manner of and procedure for transferring supervision and control from each separate committee, board or com-
mission to the committee, board or commission which is supervising and controlling the combined system; or

(2) The manner of and procedure for combining each separate committee, board or commission into one committee, board or commission and transferring thereto supervision and control as aforesaid.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

§16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.

§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

§16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

§16-13-16. Rates for service; change or readjustment; hearing; lien and recovery; discontinuance of services.

§16-13-17. Government units subject to established rates.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

§16-13-19. Contract with other municipalities for service of works; powers of lessee as to rates; intercepting sewers.

§16-13-22. Powers conferred in addition to existing powers; jurisdiction outside corporate limits.

§16-13-22f. Exemption of bonds from taxation.

§16-13-22g. Covenants with bondholders.

§16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

§16-13-1. Acquisition, operation, etc., of works; acquisition of property; issuance of bonds.

(a) Any municipal corporation and/or sanitary district in the state of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within
and/or without the corporate limits of such municipal corpora-
tion:

(1) A sewage collection system and/or a sewage treatment
plant or plants, intercepting sewers, outfall sewers, force mains,
pumping stations, ejector stations, and all other appurtenances
necessary or useful and convenient for the collection and/or
treatment, purification and disposal, in a sanitary manner, of the
liquid and solid waste, sewage, night soil and industrial waste of
such municipal corporation and/or sanitary district, including
acquisition of the municipal sewerage system resulting from the
severance of a combined system pursuant to section one-b,
article twenty, chapter eight of this code; and

(2) A stormwater collection system and control system,
including all lines, pumping stations and all other facilities and
appurtenances necessary or useful and convenient for the col-
lection and control of stormwater, and an associated stormwater
management program.

(b) Any municipal corporation and/or sanitary district in the
state of West Virginia is hereby authorized and empowered to
acquire by gift, grant, purchase, condemnation, or otherwise, all
necessary lands, rights-of-way and property therefor, within
and/or without the corporate limits of such municipal corpora-
tion and/or sanitary district, and to issue revenue bonds to pay
the cost of such works and property.

(c) Any municipality may serve and supply the facilities of
such sewerage system and a stormwater system and associated
stormwater management program within the corporate limits of
the municipality and within the area extending twenty miles
beyond the corporate limits of such municipality: Provided,
That the municipality may not serve or supply the facilities of
such sewerage system or stormwater system within the corpo-
rate limits of any other municipality without the consent of the
governing body thereof: Provided, however, That for storm-
37 water systems, within the twenty miles beyond the municipality’s corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

38 (d) No obligations shall be incurred by any municipality and/or sanitary district in construction or acquisition except such as is payable solely from the funds provided under the authority of this article.

39 (e) No municipal corporation or sanitary district may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

§16-13-2. Sanitary board to supervise and control construction, etc., of works; appointment of board; definitions.

1 (a) The construction, acquisition, improvement, equipment, custody, operation and maintenance of any works for the collection, treatment or disposal of sewage and, in addition, for the collection and control of stormwater and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of a sanitary board appointed by the governing body as set forth in section eighteen of this article.

2 (b) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

3 (1) “Board” means the sanitary board as set up in section eighteen of this article.
(2) "Governing body" means the mayor and council or other legally constituted governing body of any municipality.

(3) "Municipality" means any municipal corporation, incorporated city, town, village or sanitary district in the state of West Virginia.

(4) "Sewage works" means a works for the collection and/or treatment, purification and disposal of sewage, in its entirety or any integral part thereof.

(5) "Stormwater system" or "stormwater works" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, corals, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(6) "Stormwater management program" means those activities associated with the management, operation, maintenance and control of stormwater and stormwater works, including, but not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law: Provided, That, as used in this article, "stormwater management program" shall not include those activities associated with the management, operation, mainte-
nance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways without the express agreement of the commissioner of highways.

(7) "Works" means sewage works and stormwater works either separately or collectively.

*§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.*

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 construction of any works, or any trust indenture as provided for, shall be approved by the governing body of the municipality before the same shall be effective.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys, and 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 the work as the board shall direct. All 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,

*Clerk's Note: This section was also amended by H. B. 2271 (Chapter 143), which passed prior to this act.*
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 consider 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, stormwater conduits, 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, including, but not limited to, those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

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 the 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 provided by this article.

§16-13-9. Contracts and obligations incurred to be paid for solely by revenue bonds.

Nothing in this article contained shall be so construed as to authorize or permit any municipality to make any contract or to incur any obligation of any kind or nature except such as shall be payable solely from the funds provided under this article. Funds for the payment of the entire cost of any of the works
6 referred to in this article, exclusive of any portions of the cost
7 that may be defrayed out of any grant or contribution, shall be
8 provided by the issuance of revenue bonds of the municipality,
9 the principal and interest of which shall be payable solely from
10 the fund herein provided for the payment, and the bonds may
11 not, in any respect, be a corporate indebtedness of the munici-
12 pality, within the meaning of any statutory or constitutional
13 limitations thereon. All the details of the bonds shall be deter-
14 mined by ordinance or ordinances of the municipality.

§16-13-16. Rates for service; change or readjustment; hearing;
   lien and recovery; discontinuance of services.

1 The governing body shall have power, and it shall be its
duty, by ordinance, to establish and maintain just and equitable
rates, fees or charges for the use of and the service rendered by:

4 (a) Sewerage works, to be paid by the owner of each and
every lot, parcel of real estate or building that is connected with
6 and uses such works by or through any part of the sewerage
7 system of the municipality, or that in any way uses or is served
8 by such works; and

9 (b) Stormwater works, to be paid by the owner of each and
every lot, parcel of real estate, or building that in any way uses
10 or is served by such stormwater works or whose property is
12 improved or protected by the stormwater works or any user of
13 such stormwater works.

14 The governing body may change and readjust such rates,
15 fees or charges from time to time. However, no rates, fees or
16 charges for stormwater services may be assessed against high-
17 ways, road and drainage easements, and/or stormwater facilities
18 constructed, owned and/or operated by the West Virginia divi-
19 sion of highways.

20 Such rates, fees or charges shall be sufficient in each year
21 for the payment of the proper and reasonable expense of opera-
tion, repair, replacements and maintenance of the works and for
the payment of the sums herein required to be paid into the
sinking fund. Revenues collected pursuant to this section shall
be considered the revenues of the works.

No such rates, fees or charges shall be established until
after a public hearing, at which all the users of the works and
owners of property served or to be served thereby and others
interested shall have an opportunity to be heard concerning the
proposed rates, fees or charges.

After introduction of the ordinance fixing such rates, fees or
charges, and before the same is finally enacted, notice of such
hearing, setting forth the proposed schedule of such rates, fees
or charges, shall be given by publication as a Class II-0 legal
advertisement in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area for such
publication shall be the municipality. The first publication shall
be made at least ten days before the date fixed in such notice for
the hearing.

After such hearing, which may be adjourned from time to
time, the ordinance establishing rates, fees or charges, either as
originally introduced or as modified and amended, shall be
passed and put into effect. A copy of the schedule of such rates,
fees and charges so established shall be kept on file in the office
of the board having charge of the operation of such works, and
also in the office of the clerk of the municipality, and shall be
open to inspection by all parties interested. The rates, fees or
charges so established for any class of users or property served
shall be extended to cover any additional premises thereafter
served which fall within the same class, without the necessity of
any hearing or notice.

Any change or readjustment of such rates, fees or charges
may be made in the same manner as such rates, fees or charges
were originally established as hereinbefore provided: Provided,
That if such change or readjustment be made substantially pro
rata, as to all classes of service, no hearing or notice shall be
required. The aggregate of the rates, fees or charges shall al-
ways be sufficient for such expense of operation, repair and
maintenance and for such sinking fund payments.

All rates, fees or charges, if not paid when due, shall consti-
tute a lien upon the premises served by such works. If any ser-
vice rate, fees or charge so established is not paid within thirty
days after the same is due, the amount thereof, together with a
penalty of ten percent, and a reasonable attorney’s fee, may be
recovered by the board in a civil action in the name of the mu-
nicipality, and in connection with such action said lien may be
foreclosed against such lot, parcel of land or building, in accor-
dance with the laws relating thereto: Provided, That where both
water and sewer services are furnished by any municipality to
any premises the schedule of charges may be billed as a single
amount or individually itemized and billed for the aggregate
thereof.

Whenever any rates, rentals, fees or charges for services or
facilities furnished shall remain unpaid for a period of thirty
days after the same shall become due and payable, the property
and the owner thereof, as well as the user of the services and
facilities shall be delinquent until such time as all rates, fees and
charges are fully paid.

The board collecting such rates, fees or charges shall be
obligated under reasonable rules and regulations, to shut off and
discontinue both water and sewer services to all delinquent
users of either water facilities, or sewer facilities, or both, and
shall not restore either water facilities or sewer facilities, to any
delinquent user of either until all delinquent rates, fees or
charges for both water facilities, and sewer facilities, including
reasonable interest and penalty charges, have been paid in full.

§16-13-17. Government units subject to established rates.
The municipality and any county government, state government and federal government served by the services of the works shall be subject to the same fees, charges and rates established as provided in this article, or to fees, charges and rates established in harmony therewith, for service rendered the municipality, county, state or federal government and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be a part of the revenues of the works as herein defined, and be applied as herein provided for the application of the revenues. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

§16-13-18. Supervision of works by sanitary board; organization of board; qualifications, terms and compensation of members.

The governing body shall provide by ordinance the organization of the board, and that the custody, administration, operation and maintenance of such works shall be under the supervision and control of a sanitary board, created as herein provided.

Such sanitary board shall be composed of either the mayor of the municipality, or the city manager thereof, if said municipality shall have a city manager form of government, and two persons appointed by the governing body: Provided, That, in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager of the municipality served by the board.

During the construction period, one of the members must be a registered professional engineer. The engineer member of the board need not be a resident of said municipality. After the construction of the plant has been completed, the engineer
member may be succeeded by a person not an engineer. No
officer or employee of the municipality, whether holding a paid
or unpaid office, shall be eligible to appointment on said sanita-
tary board until at least one year after the expiration of the term
of his or her public office. The appointees shall originally be
appointed for terms of two and three years respectively, and
upon the expiration of each term and each succeeding term, an
appointment of a successor shall be made in like manner for a
term of three years. Vacancies shall be filled for an unexpired
term in the same manner as the original appointment. Each
member shall give such bond, if any, as may be required by
ordinance. The mayor or city manager shall act as chairman of
the sanitary board, which shall elect a vice chairman from its
members and shall designate a secretary and treasurer (but the
secretary and the treasurer may be one and the same), who need
not be a member or members of the sanitary board. The vice
chairman, secretary and treasurer shall hold office as such at the
will of the sanitary board.

The members of the sanitary board shall receive compensa-
tion for their services, either as a salary or as payments for
meetings attended, as the governing body may determine, and
shall be entitled to payment for their reasonable expenses in-
curred in the performance of their duties. The governing body
shall fix the reasonable compensation of the secretary and trea-
surer in its discretion, and shall fix the amounts of bond to be
given by the treasurer. All compensation, together with the
expenses in this section referred to, shall be paid solely from
funds provided under the authority of this article. The sanitary
board shall have power to establish bylaws, rules and regula-
tions for its own government.

§16-13-19. Contract with other municipalities for service of
works; powers of lessee as to rates; intercepting
sewers.
Any municipality operating a sewage collecting system and/or a sewage disposal plant or plants or stormwater works as defined in this article, or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner), is hereby authorized to contract with one or more other municipal corporations or political subdivisions within the state (in this section called the lessee), and such lessees are hereby authorized to enter into contracts with the owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the boards and approved by ordinances of the respective contracting parties: Provided, That no contract shall be made for a period of more than forty years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture.

The lessee shall by ordinance have power to establish, change and adjust rates, fees and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates, fees and charges for the service rendered in the municipality where the works are owned and operated, and such rates, fees or charges shall be collectible and shall be a lien as herein provided for rates, fees and charges made by the owner.

The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this article unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds. The income received by the
The authority herein given shall be in addition to and not in derogation of any power existing in any municipality under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this article, all municipal corporations shall have jurisdiction for twenty miles outside the corporate limits thereof: Provided, That for stormwater systems, within the twenty miles beyond the municipality’s corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

The jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

Said bonds and the interest thereon, together with all properties and facilities of said municipality owned or used in connection with the works, and all the moneys, revenues and other income of such municipality derived from such works shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision or agency thereof.

Any resolution authorizing the issuance of bonds hereunder, or any trust indenture with any bank or trust company
within or without the state, for the security of the bonds, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds, or the revenues derived from the sewerage system or stormwater system, may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depositary for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, operation or control of such sewerage systems or stormwater system, including any part thereof heretofore or hereafter constructed or acquired or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of such fees, rentals or other charges for the use of the services and facilities of such sewerage system or stormwater system, including the parts thereof heretofore or hereafter constructed or acquired and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of operation, maintenance and repair of such sewerage system or stormwater system, the payment of the principal of and interest on all bonds or other obligations payable from the revenues of such sewerage system or stormwater system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of such sewerage system or stormwater system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such sewerage system or stormwater system;
(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenue of such sewerage system or stormwater system, and the rank or priority, as to lien and source and security for payment from the revenues of the sewerage system or stormwater system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of such bonds rescinded and repealed;

(g) Budgets for the annual operation, maintenance and repair of such sewerage system or stormwater system and restrictions and limitations upon expenditures for such purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of such budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon such sewerage system or stormwater system, or any part thereof, and the use and disposition of the proceeds of any insurance;

(i) The keeping of books of account, relating to such undertakings and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified, or approved by accountants designated or approved by the holders of bonds issued hereunder;

(j) Such other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued hereunder, notwithstanding that other covenants are not expressly enumerated hereunder, it being the intention hereof to
grant to the municipalities the power to make any and all cove-
nants or agreements necessary in order to secure greater market-
ability for bonds issued hereunder as fully and to the same ex-
tent as such covenants or agreements could be made by a pri-
ivate corporation rendering similar services and facilities and to
grant such municipalities full and complete power to enter into
any contracts, covenants or agreements with holder of bonds
issued hereunder not inconsistent with the constitution of the
state of West Virginia.

§16-13-23a. Additional powers of municipality upon receipt of
order to cease pollution.

Notwithstanding any other provision contained in this arti-
cle, and in addition thereto, the governing body of any munici-
pal corporation which has received or which hereafter receives
an order issued by the director of the division of environmental
protection or the environmental quality board requiring such
municipal corporation to cease the pollution of any stream or
waters, is hereby authorized and empowered to fix, establish
and maintain, by ordinance, just and equitable rates, fees or
charges for the use of the services and facilities of the existing
sewer system and/or stormwater system of such municipal cor-
poration, and/or for the use of the services and facilities to be
rendered upon completion of any works and system necessary
by virtue of said order, to be paid by the owner, tenant or occu-
pant of each and every lot or parcel of real estate or building
that is connected with and uses any part of such sewer system or
stormwater system, or that in any way uses or is served thereby,
and may change and readjust such rates, fees or charges from
time to time.

Such rates, fees or charges shall be sufficient for the pay-
ment of all the proper and reasonable costs and expenses of the
acquisition and construction of plants, machinery and works for
the collection and/or treatment, purification and disposal of
sewage or stormwater, and the repair, alteration and extension
of existing sewer facilities or stormwater facilities, as may be
necessary to comply with such order of the director of the divi-
sion of environmental protection or the environmental quality
board, and for the operation, maintenance and repair of the
entire works and system.

The governing body shall create, by ordinance, a sinking
fund to accumulate and hold any part or all of the proceeds
derived from rates or charges until completion of the construc-
tion, to be remitted to and administered by the municipal bond
commission by expending and paying the costs and expenses of
construction and operation in the manner as provided by said
ordinance.

After the completion of the construction such rates, fees or
charges shall be sufficient in each year for the payment of the
proper and reasonable costs and expenses of operation, mainte-
nance, repair, replacement and extension from time to time, of
the entire sewer and works or entire stormwater works.

No such rates, fees or charges shall be established until
after a public hearing, at which all the potential users of the
works and owners of property served or to be served thereby
and others shall have had an opportunity to be heard concerning
the proposed rates or charges.

After introduction of the ordinance fixing rates, fees or
charges, and before the same is finally enacted, notice of such
hearing, setting forth the proposed schedule of rates, fees or
charges, shall be given by publication of notice as a Class II-0
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for such publication is the municipality. The first publication
shall be made at least ten days before the date fixed therein for
the hearing.
After such hearing, which may be adjourned from time to time, the ordinance establishing the rates, fees or charges, either as originally introduced or as modified and amended, may be passed and put into effect. A copy of the schedule of the rates, fees and charges so established shall be kept on file in the office of the sanitary board having charge of the construction and operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

Any change or readjustment of rates, fees or charges may be made in the same manner as rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice is required.

If any rate, fees or charge so established is not paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney’s fee, may be recovered by the sanitary board of such municipal corporation in a civil action in the name of the municipality.

Any municipal corporation exercising the powers given herein has authority to construct, acquire, improve, equip, operate, repair and maintain any plants, machinery, or works necessary to comply with the order of the director of the division of environmental protection or the environmental quality board, and the authority provided herein to establish, maintain and collect rates, fees or charges is an additional and alternative method of financing such works and matters, and is independent of any other provision of this article insofar as the article provides for or requires the issuance of revenue bonds or the imposition of rates, fees and charges in connection with the
Provided, That except for the method of financing such works and matters, the construction, acquisition, improvement, equipment, custody, operation, repair and maintenance of any plants, machinery or works in compliance with an order of the director of the division of environmental protection or the environmental quality board, and the rights, powers, and duties of the municipal corporation and the respective officers and departments thereof, including the sanitary board, are governed by the provisions of this article: Provided, however, That the jurisdiction and authority provided by this section does not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways and no rates, fees or charges for stormwater services or costs of compliance may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

CHAPTER 213


[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]
authorizing a rainy day fund for municipalities known as a financial stabilization fund; naming act; providing findings of Legislature; authorizing municipalities to create financial stabilization funds; specifying the receipts available for the fund; establishing a cap of thirty percent for the fund; authorizing investment of funds; and specifying authorized expenditures from the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MUNICIPAL FINANCIAL STABILIZATION FUND ACT.

§8-37-1. Short title.

§8-37-2. Findings and declarations.

§8-37-3. Budget stabilization fund; creation; appropriation; maximum.

§8-37-4. Fund investment; usage.

§8-37-1. Short title.

1 This act may be known and cited as the “Municipal
2 Financial Stabilization Fund Act”.

§8-37-2. Findings and declarations.

1 The Legislature finds and declares that:

2 (1) Municipalities should maintain a prudent level of
3 financial resources to try to protect against reducing service
4 levels or raising taxes and fees because of temporary revenue
5 shortfalls, unpredicted one-time expenditures or emergency
6 situations; and
(2) The creation, maintenance and use of a financial stabilization fund will provide municipalities with assistance to meet these challenges, as well as enable them to improve their financial management and practices.

§8-37-3. Budget stabilization fund; creation; appropriation; maximum.

(a) A municipality may create a financial stabilization fund by a majority vote of its governing body. The fund may receive appropriations, gifts, grants and any other funds made available.

(b) The governing body may appropriate a sum to the fund from any surplus in the general fund at the end of each fiscal year or from any other money available.

(c) The amount of money in the fund may not exceed thirty percent of the municipality’s most recent general fund budget, as originally adopted. When the fund exceeds the thirty percent, the governing body shall transfer the excess to any fund it considers appropriate.

§8-37-4. Fund investment; usage.

(a) The governing body may invest the money in the fund as it considers appropriate, with the earnings retained by the fund.

(b) The governing body may appropriate money in the financial stabilization fund upon a majority vote for the following purposes:

(1) To cover a general fund shortfall; or

(2) Any other purpose the municipality considers appropriate.
AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-e, relating to the assessment of a fifty dollar civil penalty in addition to any fines and costs for crimes involving the division of natural resources' use of decoy animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5e. Assessment fee for decoy animals.

1 Any person convicted for the violation of any law involving the division of natural resources' use of a decoy animal shall, in addition to any fines and costs for the criminal violation, pay a fifty dollar civil penalty to the division of natural resources, law-enforcement section. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division of natural resources, law-enforcement section. All funds collected are to be placed in a special account and used for: (1) The purchase or repair of decoy animals; and (2) the purchase of equipment for use with decoy animals.
AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it illegal to possess, sell or buy bear parts under certain circumstances; and increasing fines and penalties for unlawfully hunting or killing bear.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) No person in any county of this state shall hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear and in the manner designated by rules promulgated by the division of natural resources and as provided for in this section. For the purposes of this section, bear parts include, but are not limited to, the pelt, gall bladder, skull and claws of bear.
(b) A person who kills a bear shall, within twenty-four hours after the killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. A division of natural resources tag shall be affixed to it before any part of the bear may be transported more than seventy-five miles from the point of kill. The division of natural resources tag shall remain on the skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the division of natural resources.

(c) It is unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with: (A) A shotgun using ammunition loaded with more than one solid ball; (B) a rifle of less than twenty-five caliber using rimfire ammunition; or (C) a cross-bow;

(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls other than as authorized in this section;

(4) To shoot at or kill a bear cub weighing less than one hundred pounds or to kill any bear accompanied by a cub;

(5) To possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel;
(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the division of natural resources for the hunting of bear;

(8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt once the bear is spotted and the chase has begun;

(9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section;

(10) To organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt notwithstanding the provisions of sections twenty-three and twenty-four of this article; or

(11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.

(d) The following provisions apply to bear destroying property:

(1)(A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any conservation officer of the division of natural resources for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.
(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the conservation officer or the wildlife biologist shall determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: Provided, however, That, in the event out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2)(A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the director of the division of natural resources. The report shall state whether or not the bear was hunted and destroyed and, if so, the sex, weight and estimated age of the bear. The report shall also include an appraisal of the property damage occasioned by the bear duly signed by three competent appraisers fixing the value of the property lost.

(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims under this section in accordance with article three, chapter twenty-nine-a of this code.

(D) All claims shall be paid in the first instance from the bear damage fund provided for in section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be
paid from the special revenue account of the division of natural resources.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value shall be the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born. In no event shall the fair market value of the livestock exceed twice the assessed value of the livestock for personal property taxes.

(e) Criminal penalties. — (1) Any person who commits a violation of 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, which fine is not subject to suspension by the court, imprisoned in a county or regional jail not less than thirty nor more than one hundred days, or both fined and imprisoned. Further, the person’s hunting and fishing licenses shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two thousand dollars nor more than seven thousand five hundred dollars, which fine is not subject to suspension by the court, imprisoned in a county or regional jail not less than thirty days nor more than one year, or both fined and imprisoned. The person’s hunting and fishing licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than five
133 thousand dollars nor more than ten thousand dollars, which fine
134 is not subject to suspension by the court, imprisoned in a
135 correctional facility not less than one year nor more than five
136 years, or both fined and imprisoned.

CHAPTER 216

(H. B. 2947 — By Delegates Yeager, Ashley,
Williams, Stemple and Marshall)

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

AN ACT to repeal section forty-a, article two, chapter twenty of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact section forty-three of said
article, all relating to the elimination of the Class AB combination
resident hunting, trapping and fishing license and the Class G
nonresident family fishing license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F and Class H licenses for
nonresidents.

1 On or after the first day of January, one thousand nine
2 hundred ninety-eight, the licenses in this section shall be
required of nonresidents to hunt and fish in West Virginia. A
Class E license shall be a nonresident hunting license and shall
entitle the licensee to hunt all legal species of wild animals and
wild birds in all counties of the state, except when other
licenses or permits are required. It shall be issued only to
citizens of the United States or Canada and to unnaturalized
persons who possess the permit referred to in section twenty-
nine of this article who are not residents of this state. The fee
therefor shall be one hundred dollars.

A Class EE license shall be a nonresident bear hunting
license and shall entitle the licensee to hunt bear in all counties
of the state, except when additional licenses or permits are
required. It shall be issued only to citizens of the United States
or Canada and to unnaturalized persons who possess the permit
referred to in section twenty-nine of this article who are not
residents of this state. The fee therefor shall be one hundred
fifty dollars.

A Class F license shall be a nonresident fishing license and
shall entitle the licensee to fish for all fish in all counties of the
state except when additional licenses or permits are required. It
shall be issued only to citizens of the United States or Canada
and to unnaturalized persons who possess the permit referred to
in section twenty-nine of this article who are not residents of
this state. The fee therefor shall be thirty dollars.

Trout fishing is not permitted with a Class F license unless
such license has affixed thereto an appropriate trout stamp as
prescribed by the division of natural resources.

A Class H license shall be a nonresident small game
hunting license and shall entitle the licensee to hunt small game
in all counties of the state, except when additional licenses or
permits are required, for a period of six days beginning with the
date it is issued. It shall be issued only to citizens of the United
States or Canada who are not residents of this state. The fee therefor shall be twenty dollars. As used in this section, “small game” means all game except bear, deer, wild turkey and wild boar.

CHAPTER 217

(H. B. 2946 — By Delegates Yeager, Williams and Stemple)

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

AN ACT to amend and reenact section forty-six-d, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a person hunting boar with a Class P license to additionally have a valid Class A, Class AB, Class X, Class A-L or Class AB-L license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46d. Class P special resident boar hunting license; fee; authority of director to propose rules limiting the number of licenses issued.

A Class P license is a special resident boar hunting license for wild boar of either sex and entitles the licensee to hunt and kill boar during the Class P license season. A Class P license may be issued only to residents. Only one Class P license may be acquired during any calendar year in which a wild boar
season is held and a Class P license may be used only by the
applicant to whom such license is issued. The fee for a Class P
license is five dollars.

The director shall promulgate rules governing the issuance
of Class P licenses. The director may limit, on an equitable
basis, the number of persons who may hunt wild boar in any
county or any part of a county. The licenses shall be issued in
a form prescribed by the director. A person hunting boar with
a Class P license must additionally have a valid Class A, Class
AB, Class X, Class A-L or Class AB-L license.

CHAPTER 218

(Com. Sub. for S. B. 708 — By Senators
Helmick, Minear, Ross and Rowe)

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

AN ACT to amend and reenact section ten, article two-b, chapter
twenty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to law-enforcement and sports
education stamp; and disallowing the use of funds from the sale
of the stamp on law-enforcement education programs for boaters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-10. Law-enforcement and sports education stamp.
(a) Any nonresident hunter, angler or trapper licensed to
hunt, fish or trap in this state, in addition to a hunting, fishing
or trapping license of Class E, EE, F, G, H or K in the case of
a nonresident, shall have a law-enforcement and sports educa-
tion stamp which shall be issued by the division of natural
resources. The stamp shall be sold at places where hunting,
fishing or trapping licenses are sold. The fee for the law-
enforcement and sports education stamp is five dollars for a
nonresident of West Virginia.

(b) The revenue derived from the sale of law-enforcement
and sports education stamps shall be deposited in the state
treasury and shall be credited to the division of natural re-
sources, law-enforcement section. The revenue shall be used
and paid out, upon order of the director, for the law-enforce-
ment section's expenses relating to the general enforcement of
state laws pertaining to the conservation of fish and wildlife and
or law-enforcement education programs for hunters, anglers and
trappers: Provided, That no expenditures of the revenue derived
from the sale of the law-enforcement and sports education
stamp shall be made for law-enforcement purposes not directly
related to the wildlife resources of the state or for the educa-
tional programs set forth in this subsection. Any unexpended
moneys derived from the sale of law-enforcement and sports
education stamps shall be carried forward to the next fiscal year
and expended for law-enforcement and educational programs.

CHAPTER 219

(Com. Sub. for H. B. 2904 — By Delegates
Manuel, Pethtel and Faircloth)

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections seventeen, seventeen-a and eighteen, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allocation of interest or other earnings accrued on certain federal moneys received for allocation by the auditor.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 3. FOREST AND WILDLIFE AREAS.

§20-3-17. Disposition of proceeds of national forests.

§20-3-17a. Same — Counties embracing Spruce Knob-Seneca Rocks national recreation area.

§20-3-18. Disposition of flood control, navigation and allied funds from the federal government.

§20-3-17. Disposition of proceeds of national forests.

Receipts from any national forest, paid to the state or its proper officers pursuant to directions of acts of Congress, are to be allocated by the auditor to each county which has acreage located in such national forest, in the proportion which the acreage in the county bears to the total acreage of the national forest in this state. Interest or other earnings accrued upon investment of the receipts pending allocation thereof shall be allocated to the recipients of the allocations in proportion to each recipient’s allocation of the receipts. Eighty percent of the funds so allocated to any county are to be paid to the board of education of the county to be expended by the board for the benefit of the public schools of the county. Twenty percent of the funds so allocated to any county are to be paid to the state
road commission to be expended for feeder and state local
service road purposes in that county.

Notwithstanding any contrary provisions of former law, any
sheriff or county court of any county having charge or custody
of any unexpended national forest proceeds, received under
allocations made pursuant to former provisions of law, shall pay
over eighty percent of the unexpended balance to the county
board of education, and twenty percent thereof to the state road
commission, for expenditure as provided herein.

§20-3-17a. Same — Counties embracing Spruce Knob-Seneca
Rocks national recreation area.

Notwithstanding the provisions of section seventeen of this
article, national forests receipts allocated by the auditor as
provided in section seventeen of this article to any county in
which is located any part of the Spruce Knob-Seneca Rocks
national recreation area as established by Public Law 89-207,
89th Congress, are to be paid by the auditor to the county as
follows: Sixty-three percent to the board of education of the
county to be expended by the board for the benefit of the public
schools of the county, and thirty-seven percent to the county
commission of the county to be expended by the commission
for general county purposes. Interest or other earnings accrued
upon investment of the receipts pending allocation thereof shall
be allocated to the recipients of the allocations in proportion to
each recipient’s allocation of the receipts.

§20-3-18. Disposition of flood control, navigation and allied funds
from the federal government.

Receipts from the treasurer of the United States, paid to the
state or its proper officers pursuant to direction of an act of
Congress relating to disposition of funds received on account of
the leasing of lands for flood control, navigation and allied
purposes, are to be allocated by the state auditor to each county in accordance with the method of allocation specified by the federal government. Interest or other earnings accrued upon investment of the receipts pending allocation thereof shall be allocated to the recipients of the allocations in proportion to each recipient's allocation of the receipts. The state auditor shall transfer to the road commission fifty percent of the funds so allocated to each county for the purpose of maintenance of feeder and state local service roads in the area or areas of the county in which the flooded lands are located. Fifty percent of the funds so allocated to any county in which the lands are located are to be paid by the state auditor to the board of education of that county to be expended by the board for the benefit of the public schools of the county.

CHAPTER 220
(S. B. 727 — By Senators Wooton, Snyder and Mitchell)

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

AN ACT to amend and reenact section twenty-one, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requirements of franchise agreements between brewers and distributors of nonintoxicating beer; and prohibiting brewers from requiring certain financial information of distributors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.
§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

(a) On and after the first day of July, one thousand nine hundred seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage or malt cooler without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state and which shall contain a provision in substance or effect as follows:

(1) The brewer recognizes that the distributor is free to manage his business in the manner the distributor deems best and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she wishes to handle and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer’s products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(2) Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer’s beer products as authorized in the distributor’s existing franchise agreement and the acquiring
binder shall market all the selling brewer's beer products through said franchised distributor as though the acquiring brewer had made the franchise agreement and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: Provided, That the acquiring brewer may distribute any of its other beer products through its duly authorized franchises in accordance with all other provisions of this section.

(b) It shall also be unlawful:

(1) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage or malt cooler at wholesale or retail, to enter into any contracts or agreements, whether written or oral, or to take any other action which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in this section;

(2) For any brewer or brewpub or distributor, or any officer, agent or representative of any brewer or brewpub or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer or brewpub or distributor and without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before the eleventh day of June, one thousand nine hundred seventy-one, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to the first day of July, one thousand nine hundred seventy-one. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is
agreed to in writing by both the brewer and the distributor involved; or

(3) For any brewer to require a distributor to submit profit and loss statements, balance sheets or financial records as a requirement to retain its franchise.

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer or brewpub at least sixty days’ notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the commissioner.

The brewer or brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub neither approves nor disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer or brewpub shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or brewpub shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer or brewpub. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer or brewpub. Nor may the brewer or brewpub impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer’s or brewpub’s or other distributors in the state of West Virginia.

A copy of such notice of disapproval shall likewise be forwarded to the commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved
within twenty days from the date of such disapproval, either the
brewer, brewpub, distributor or prospective franchisee, trans-
feree or purchaser shall notify the other parties of his or her
demand for arbitration and shall likewise notify the commis-
sioner thereof. A dispute or disagreement shall thereupon be
submitted to arbitration in the county in which the distributor’s
principal place of business is located by a board of three
arbitrators, which request for arbitration shall name one
arbitrator. The party receiving such notice shall within ten days
thereafter by notice to the party demanding arbitration name the
second arbitrator or, failing to do so, the second arbitrator shall
be appointed by the chief judge of the circuit court of the
county in which the distributor’s principal place of business is
located on request of the party requesting arbitration in the first
instance. The two arbitrators so appointed shall name the third
or, failing to do so within ten days after appointment of the
second arbitrator, the third arbitrator may be appointed by said
chief judge upon request of either party. The arbitrators so
appointed shall promptly hear and determine the questions
submitted pursuant to the procedures established by the
American arbitration association and shall render their decision
with all reasonable speed and dispatch but in no event later than
twenty days after the conclusion of evidence. Said decision
shall include findings of fact and conclusions of law and shall
be based upon the justice and equity of the matter. Each party
shall be given notice of such decision. If the decision of the
arbitrators be in favor of or in approval of the proposed sale or
transfer, the brewer or brewpub shall forthwith agree to the
same and shall immediately transfer the franchise to the
proposed franchisee, transferee or purchaser unless notice of
intent to appeal such decision is given the arbitrators and all
other parties within ten days of notification of such decision. If
any such party deems himself aggrieved thereby, such party
shall have a right to bring an appropriate action in circuit court.
Any and all notices given pursuant to this subsection shall be
given to all parties by certified or registered mail, return receipt
requested.
(d) The violation of any provision of this section by any brewer or brewpub shall constitute grounds for the forfeiture of the bond furnished by such brewer or brewpub in accordance with the provisions of section twelve of this article. Moreover, any circuit court of the county in which a distributor’s principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer or brewpub and such distributor and, in granting an injunction to a distributor, the court shall provide that the brewer or brewpub so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.

CHAPTER 221

(H. B. 2896 — By Delegates Douglas, Kuhn, Perdue, Prunty, Flanigan, Angotti and Ellem)

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

AN ACT to amend and reenact sections two and three, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the oil and gas inspectors’ examining board; removing minimum salary provisions; revising grievance procedures; revising procedures of appeal of suspension or dismissal; levels of grievance proceedings; and revising qualifications to serve on board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OIL AND GAS INSPECTORS’ EXAMINING BOARD.
§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his or her probationary appointment, such person (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least six years' actual relevant experience in the oil and gas industry: Provided, That not exceeding three years of such experience shall be satisfied by any combination of (i) a bachelor of science degree in science or engineering which shall be considered the equivalent of three years' actual relevant experience in the oil and gas industry, (ii) an associate degree in petroleum technology which shall be considered the equivalent of two years actual relevant experience in the oil and gas industry, and (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the division of environmental protection. No
candidate’s name may remain on the register for more than three years without re-qualifying.

(c) Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the director, and the oil and gas inspectors’ examining board may make recommendations for salary determinations. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the director shall consider ability, performance of duty and experience. Inspectors and supervising inspectors are entitled to mileage expense reimbursement at the rate established for in-state travel of public employees, in the governor’s travel rules, as administered by the department of administration. No reimbursement for traveling expenses may be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of official duties.

(d)(1) For grievances concerning matters other than suspension or dismissal, inspectors may file written grievances in accordance with the procedures set forth in article six-a, chapter twenty-nine of this code. For a level one grievance, the inspector shall file the grievance with the supervising inspector. For a level two grievance, the inspector shall file the grievance with the chief of the office of oil and gas.

(2) An inspector or the supervising inspector, after having received a permanent appointment, shall be suspended or dismissed by the chief of the office of oil and gas only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office or other good cause.

(3) Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition the chief of the office of oil and gas for the dismissal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector,
the chief shall cause an investigation of the facts to be made. If,
after such investigation, the chief finds that there is substantial
evidence which, if true, warrants dismissal of the inspector or
supervising inspector, the chief shall bring the petition before
the oil and gas inspectors' examining board requesting dis-
missal of the inspector or supervising inspector.

(4) A level three grievance is a hearing before the board to
consider the appeal of a level two grievance, the appeal of
suspension or dismissal by the chief, or a citizens’ petition
seeking dismissal of an inspector or supervising inspector. For
any level three grievance, the chief may not preside over the
hearing and may not vote. The remaining members of the board
shall select a member of the board to serve as acting chair, who
may not vote.

(5) An appeal of an inspector from a suspension or dis-
missal by the chief may be filed by the end of the tenth day
following the suspension or dismissal notwithstanding the time
limits and requirements set forth in subsection (c), section four,
article six-a of chapter twenty-nine of this code.

(6) On receipt of an appeal of a level two grievance, an
appeal of suspension or dismissal by the chief, or a citizens’
petition seeking dismissal of an inspector or the supervising
inspector, the oil and gas inspectors’ examining board shall
promptly notify the inspector or supervising inspector, as the
case may be, to appear before it at a time and place designated
in said notice, which time shall be not less than fifteen days nor
more than thirty days thereafter notwithstanding the time limits
and requirements set forth in subsection (c), section four, article
six-a of chapter twenty-nine of this code. There shall be
attached to the copy of the notice served upon the inspector or
supervising inspector a copy of the appeal or petition filed with
such board.

(7) At the time and place designated in said notice, the oil
and gas inspectors' examining board shall conduct a level three
grievance proceeding in which the testimony shall be recorded
to enable a transcript to be prepared for any further appeal. The
board shall hear all evidence offered in support of the appeal or petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance may be granted except for good cause shown.

(8) The acting chair of the board may administer oaths and subpoena witnesses.

(9) An inspector or supervising inspector who willfully refuses or fails to appear before such board, or having appeared, refuses to answer under oath any relevant question on the ground that the inspector’s testimony or answer might incriminate such inspector, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at such hearing before such board, forfeits the inspector’s position notwithstanding any provisions to the contrary in section six, article six-a, chapter twenty-nine of this code.

(10) If, after hearing, the oil and gas inspectors’ examining board finds that the inspector or supervising inspector should be suspended, dismissed or otherwise disciplined, it shall enter an order to that effect. An appeal of the decision of the board shall proceed as a level four proceeding under the provisions of subsection (d), section four, article six-a, chapter twenty-nine. The provisions of subsection (e) of that section regarding an expedited grievance shall not apply to oil and gas inspectors.

§22C-7-3. Oil and gas inspectors’ examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

(a) (1) There is hereby continued an oil and gas inspectors’ examining board consisting of five members, two of whom shall be ex officio members and three of whom shall be appointed by the governor, by and with the advice and consent of the Senate. Appointed members may be removed only for the same causes and like manner as elective state officers. One member of the board shall be the representative of the public at
large and shall be a person who is knowledgeable about the subject matter of this article and has no direct financial interest in oil and gas production other than the receipt of royalty payments which do not exceed ten percent of his or her annual income and who by reason of previous training or experience may reasonably be said to represent the viewpoint of surface owners or environmental organizations: Provided, That the public member serving on the board on the first day of January, two thousand one, shall remain on the board until the expiration of his or her term and is also eligible for reappointment. One member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators. One member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

(2) The chief of the office of oil and gas of the division of environmental protection and the chief of the office of water resources of the division of environmental protection or their designees shall be ex officio members.

(3) The appointed members of the board shall be appointed for overlapping terms of six years, except that the original appointments shall be for terms of two, four and six years, respectively. Any member whose term expires may be reappointed by the governor.

(4) The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(5) The chief of the office of oil and gas or the chief's designee serving pursuant to subdivision two of this subsection shall serve as chair of the board: Provided, That for any level three grievance proceeding the chief or the chief's designee
may not serve as a chair or vote. The board shall elect a
secretary from its members.

(6) Members of the board, before performing any duty,
shall take and subscribe to the oath required by section five,
article IV of the constitution of West Virginia.

(7) The board shall meet at such times and places as shall
be designated by the chair. It is the duty of the chair to call a
meeting of the board on the written request of two members.
Notice of each meeting shall be given in writing to each
member by the secretary at least five days in advance of the
meeting. A majority of members is a quorum for the transaction
of business.

(b) In addition to other powers and duties expressly set
forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector and
supervising inspector, which shall include the applicant’s social
security number, and forms for written examinations to test the
qualifications of candidates, with such distinctions, if any, in
the forms for oil and gas inspector and supervising inspector as
the board may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules relating to the
examination, qualification and certification of candidates for
appointment, and relating to hearings for removal of inspectors
or the supervising inspector, required to be held by this article.
All of such rules shall be printed and a copy thereof furnished
by the secretary of the board to any person upon request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one or more
members of the board or an employee of the division of
environmental protection may be designated to give to a
candidate the written portion of the examination;
(4) Prepare and certify to the director of the division of environmental protection a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time consider necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the director of the division of environmental protection a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment; or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the suspension, dismissal or other discipline of inspectors or the supervising inspector in accordance with the provisions of this article;
(8) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and

(9) Render such advice and assistance to the director of the division of environmental protection as the director shall from time to time determine necessary or desirable in the performance of such duties.

CHAPTER 222

(H. B. 2885 — By Delegates Butcher, Givens, Stemple, Craig, Coleman, Frederick and H. White)

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

AN ACT to amend and reenact section seven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a, article three, chapter seven of said code, all relating to displaying flags at the state capitol, county courthouses or other governmental buildings; requiring the prisoner-of-war/missing-in-action flags be flown over the state capitol on certain days; providing counties and municipalities with the option to purchase prisoner-of-war/missing-in-action flags for display over courthouses or other governmental buildings on certain days.

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two-a, article three, chapter seven be amended and reenacted, all to read as follows:
Chapter
4. The Legislature.
7. County Commissions and Officers.

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.

§4-1-7. Flags displayed during sessions.

1 The flag of the United States, and the flag of the state of West Virginia shall be flown over the state capitol building year-round; and the POW-MIA flag shall be flown over the state capitol building on Memorial Day, Armed Forces Day, Flag Day, Independence Day, National POW/MIA Recognition Day and Veteran’s Day each year.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-2a. County commissions to purchase and display flags.

1 The county commission of every county of the state shall, out of its general revenue fund, cause to be purchased a United States flag and a flag of the state of West Virginia, four feet by six feet in dimensions and of regulation bunting, or of other appropriate size and quality, for its courthouse, and shall require the same to be displayed from the courthouse, or from an appropriate staff or pole near thereto, every day between the hours of sunrise and sunset, except in inclement weather. Each county court shall likewise cause to be purchased a United States flag and a flag of the state of West Virginia, and require same to be displayed at all times in the circuit courtroom of the county. Each county and any municipality therein shall have the option of purchasing a POW-MIA flag to be displayed from its courthouse or other governmental building alongside the state
flag and United States flag on Memorial Day, Armed Forces Day, Flag Day, Independence Day, National POW/MIA Recognition Day and Veteran's Day each year. It shall be the duty of the custodian or other person in charge of the courthouse to see that the flags are displayed as herein provided.

CHAPTER 223

(Com. Sub. for H. B. 2371 — By Delegates Michael and Mezzatesta)

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

AN ACT to repeal section six, article three-b, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, five, seven, eight and ten of said article, all relating to the licensing of electricians; permitting equivalent licensing of certain former residents; authorizing legislative rules; and increasing fines.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-2. Necessity of license; definitions.
§29-3B-3. Exemptions; nonapplicability of license requirements; legislative rules for limited reciprocity.
§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and non-assignability of licenses; expiration of license; renewal; reciprocity.
§29-3B-5. Rules; applications and examinations; fees.
§29-3B-2. Necessity of license; definitions.

After the effective date of this article, no electrical work may be performed, offered or engaged in for compensation or hire within the state of West Virginia by any person, firm or corporation unless such person, firm or corporation possesses a license and a certificate issued by the state fire marshal in accordance with this article, and a copy of the license is posted on any job in which electrical work is being performed for hire.

As used in this article:

(a) “Apprentice electrician” means a person with interest in and an aptitude for performing electrical work but who alone is not capable of performing electrical work unless directly supervised by a higher license classification.

(b) “Electrical contractor” means a person, firm or corporation who engages in the business of electrical work and employs master electricians, journeyman electricians, apprentice electricians or other related workers for the construction, alteration or repair of any electrical wiring, equipment or systems as defined in the scope of the national electric code.

(c) “Electrical work” means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying, controlling or using electricity as defined in the scope of the national electric code.

(d) “Journeyman electrician” means a person qualified by at least four years of electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures and other appliances, provided that this classification is not authorized to design electrical systems.

(e) “License” means a valid and current certificate of competency issued by the state fire marshal.
(f) "Master electrician" means a person with at least five years of electrical work experience, including experience in all phases of electrical wiring and installation, who is competent to design electrical systems, and to instruct and supervise the electrical work of journeyman electricians, apprentice electricians, and other related workers.

(g) "Specialty electrician" means a person qualified to perform electrical work in a limited or specialized area.

§29-3B-3. Exemptions; nonapplicability of license requirements; legislative rules for limited reciprocity.

(a) This article does not apply to and no license may be required for: (1) A person who performs electrical work with respect to any property owned or leased by that person; (2) a person who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment; (3) a person who performs electrical work while employed by an employer who engages in the business of selling appliances at retail, so long as such electrical work is performed incident to the installation or repair of appliances sold by the employer; (4) a person who, while employed by a public utility or its affiliate, performs electrical work in connection with the furnishing of public utility service; or (5) any government employee performing electrical work on government property.

(b)(1) Notwithstanding any other provision of this article to the contrary, a journeyman or master electrician license may be issued for a person who is a former resident of this state, who formerly held an electrician's license issued by this state, who has obtained an equivalent electrician license from another state, and who returns to this state as a permanent resident, without requiring the person to meet the application or examination requirements that would otherwise be imposed on the person by the requirements of this article when the issuance of the license is permitted by legislative rules promulgated pursuant to the provisions of this subsection.
(2) The state fire marshal shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for the licensing of electricians with equivalent qualifications described in subdivision (1) of this subsection. Notwithstanding any other provision of this code to the contrary, the legislative rules described in this subsection may not be filed as emergency rules.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

(a) The following classes of license may be issued by the state fire marshal: “Master electrician license,” “journeyman electrician license,” “apprentice electrician license” and “temporary electrician license.” Additional classes of specialty electrician license may be issued by the state fire marshal.

(b) The state fire marshal shall issue the appropriate class of license upon a finding that the applicant possesses the qualifications for the class of license to be issued.

(c) The state fire marshal shall propose rules for legislative approval regarding qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(d) To the extent that other jurisdictions provide for the licensing of electricians, the state fire marshal may grant the same or equivalent classification of license without written examination upon satisfactory proof furnished to the state fire marshal that the qualifications of the applicant are equal to the qualifications required by this article and upon payment of the required fee: Provided, That as a condition to reciprocity, the other jurisdictions must extend to licensed electricians of this state, the same or equivalent classification.

(e) In addition to any other information required, the applicant’s social security number shall be recorded on any
§29-3B-5. Rules; applications and examinations; fees.

(a) The state fire marshal shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article. Rules adopted by the state fire marshal and presently in effect will remain in effect until and unless the state fire marshal adopts new rules, and the state fire marshal may adopt any or all of the rules presently in effect.

(b) The state fire marshal shall prepare and arrange for the receipt of applications from those who intend to perform electrical work in the state of West Virginia. Such application shall be sufficiently detailed to enable the state fire marshal to determine the presence or absence of an applicant’s qualifications for a license of a particular class. The state fire marshal may require applicants to supply affidavits or other documents attesting to the applicant’s qualifications from past employers, other electricians, engineers and others with knowledge of the applicant’s qualifications. The state fire marshal may make such other inquiries as he or she considers necessary to determine the qualifications of the applicant. An applicant expressly consents to such inquiries by the state fire marshal by his or her application.

§29-3B-7. Denial of license; suspension and revocation of license.

(a) The state fire marshal may deny a license to any applicant who fails to comply with the rules established by the state fire marshal, or who lacks the necessary qualifications.

(b) The state fire marshal may upon complaint or upon his or her own inquiry and, after notice to the licensee, suspend or revoke a licensee’s license if:

1. The license was granted upon an application or documents supporting such application which materially misstated the terms of the applicant’s qualifications or experience;
(2) The licensee subscribed or vouched for a material misstatement by an applicant;

(3) The licensee incompetently or unsafely performs electrical work;

(4) The licensee violated any statute of the state of West Virginia, any rule lawfully promulgated by an agency of the state of West Virginia or any ordinance of any municipality or county of the state of West Virginia which protects the consumer or public against unfair, unsafe, unlawful or improper business practices; or

(5) The licensee fails to comply with any rule of the state fire marshal promulgated to fulfill his responsibilities under this article.

Any person aggrieved by an order or decision of the state fire marshal under this article is entitled to judicial review as provided by section eighteen, article three of this chapter and by chapter twenty-nine-a of this code.

§29-3B-8. Effect of noncompliance with article; failure to obtain license.

Any person, firm, corporation or employee thereof, or any representative, member or officer of such firm or corporation, individually, entering upon or engaging in the business of performing any electrical work as defined in this article, without obtaining the required license or otherwise complying with this article, is for the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars, nor more than five hundred dollars. For a second and each subsequent offense, the penalty and punishment is a fine of not less than five hundred dollars nor more than one thousand dollars.

Each day during which such electrical work is performed without the required license or while in noncompliance with
any of the provisions of this article, after official notice that such work is unlawful, is a separate offense.

Any electrical work performed by a person, firm or corporation which is determined by the state fire marshal to constitute a safety or health hazard to members of the public or any electrical work of an extensive nature being performed by any person without the required license or otherwise in non-compliance with the requirements of this article or contrary to an order or rule promulgated lawfully by the state fire marshal, is subject to being issued a citation or a civil action in the name of the state in the circuit court of the county where such work is being performed for an injunction against such person, firm or corporation, enjoining such work or violation. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this article, with the lawful orders of the state fire marshal and with any final decision of the state fire marshal or state fire commission. The state fire marshal shall be represented in all such proceedings by the attorney general or his assistants.

§29-3B-10. Disposition of fees, fines and other receipts.

All fees shall be paid to the state fire marshal. All fines shall be paid into the general revenue of the state. Such receipts shall be deposited by him in a special account with the state treasurer for the use of the state fire marshal as provided in subsection (c), section twelve-b, article three of this chapter.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

(b) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or a license as a physician assistant by the West Virginia board of medicine, each person licensed as a pharmacist by the West Virginia board of pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia board of examiners for registered professional nurses, each person licensed as a licensed practical nurse by the West Virginia state board of examiners for licensed practical nurses and each person licensed to practice medicine and surgery as an osteopathic physician and surgeon or certified as an osteopathic
20 physician assistant by the West Virginia board of osteopathy
21 shall complete two hours of continuing education coursework
22 in the subject of end-of-life care including pain management
23 during each continuing education reporting period. The two
24 hours shall be part of the total hours of continuing education
25 required by each board by rule and not two additional hours.

CHAPTER 225

(Com. Sub. for H. B. 2227 — By Delegates
Douglas, Perdue and Manchin)

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

AN ACT to amend and reenact section eleven, article three, chapter
thirty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to permitting an annual license by
endorsement for summer camp physicians.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11. Endorsement of licenses to practice medicine and
surgery and podiatry; fees; temporary license;
summer camp doctors.

1 (a) Any person seeking to be licensed to practice medicine
2 and surgery in this state who holds a valid license to practice
3 medicine and surgery attained under requirements substantially
4 similar to the requirement of section ten of this article from
another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada, and any person seeking to be licensed to practice podiatry in this state who holds a valid license to practice podiatry attained under requirements substantially similar to the requirements in section ten of this article from another state, territory or foreign country or the District of Columbia shall be issued a license to practice medicine and surgery or podiatry, as appropriate, in this state if he or she meets the following requirements:

(1) He or she must submit an application to the board on forms provided by the board and remit a reasonable licensure fee, the amount of such reasonable fee to be set by the board. The application must, as a minimum, require a statement that the applicant is a licensed physician or podiatrist in good standing and indicate whether any medical disciplinary action has been taken against him or her in the past; and

(2) He or she must demonstrate to the satisfaction of the board that he or she has the requisite qualifications to provide the same standard of care as a physician or podiatrist initially licensed in this state.

(b) The board may investigate the applicant and may request a personal interview to review the applicant’s qualifications and professional credentials.

(c) The board may, at its discretion, grant a temporary license to an individual applying for licensure under this section if the individual meets the requirements of subdivision (1), subsection (a) of this section. Such temporary license shall only be valid until the board is able to meet and consider the endorsement request. The board may fix and collect a reasonable fee for a temporary license, the amount of such reasonable fee to be set by the board.

(d) The application fee shall be waived, and to the extent consistent with the integrity of the licensure process and the requirements for licensure as set forth in this section and in the relevant legislative rules, the board shall expedite its processing
of an individual's application to practice medicine and surgery, or practice podiatry: Provided, That the sole purpose for licensure is to provide services at a children's summer camp for not more than one specifically designated three week period annually. The license shall be issued for a period of the specifically designated three weeks only, on an annual basis.

CHAPTER 226

(Com. Sub. for H. B. 2751 — By Delegates Amores, Fleischauer, Craig and Smirl)

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

AN ACT to amend article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new section, designated section eleven-a, all relating to board of medicine granting a limited license to practice medicine and surgery by endorsement without examination to medical school faculty; establishing qualifications; authorizing board to investigate and interview applicant; limiting practice; term of limited license; requiring biennial license renewal and exception; requiring physician to keep licenses granted by other jurisdictions in good standing.

Be it enacted by the Legislature of West Virginia:

That article three, chapter thirty 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-a, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.
§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

(a) The board shall issue a limited license to practice medicine and surgery without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada, and who has completed the application form prescribed by the board, remitted a nonrefundable application fee in the amount of one hundred fifty dollars and who presents satisfactory proof to the board that:

1. He or she is of good moral and professional character;
2. He or she is physically and mentally capable of engaging in the practice of medicine and surgery;
3. He or she is able to communicate in English;
4. He or she is a graduate of a school of medicine which is approved by the liaison committee on medical education or by the World Health Organization or by the board with the degree of doctor of medicine or its equivalent;
5. He or she has successfully completed one year of approved graduate clinical training or a fellowship of at least one year, or has received training which the board determines to be equivalent to or exceeds the one year graduate clinical training or fellowship requirement;
6. He or she has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under section fourteen of this article; and
7. He or she has been offered and has accepted a faculty appointment to teach in a medical school in this state.

(b) The board shall investigate the applicant and may request a personal interview to review the applicant’s qualifications and professional credentials.
(c) The medical practice of a physician licensed under this section is limited to the medical center of the medical school to which the physician has been appointed to the faculty.

(d) A limited license issued under this section is valid for a term of one year. No limited license issued pursuant to this section may be renewed.

(e) Before the limited license has expired, a physician licensed under this section may apply for a license to practice medicine and surgery in West Virginia pursuant to the provisions of section twelve of this article: Provided, That any license granted by the board pursuant to this subsection, retains the practice limitations set out in subsection (c) of this section.

(f) Any license issued under this section will automatically expire and be void, without notice to the physician, when the physician’s faculty appointment is terminated. The dean of the medical school shall notify the board within five days of the termination of a faculty appointment of a physician licensed pursuant to this section.

(g) A physician licensed under this section must keep all medical licenses issued by other jurisdictions in good standing and must notify the board, within fifteen days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a medical license issued by another jurisdiction.

CHAPTER 227

(H. B. 3239 — By Delegates Douglas and Kuhn)

[Passed April 10, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the number of hours of continuing education required to be completed by a physician assistant.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master’s degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(2) "Physician assistant-midwife" means a physician assistant who meets all qualifications set forth under subdivision (1) of this subsection and fulfills the requirements set forth in subsection (d) of this section; is subject to all provisions of this section; and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods;
(3) "Supervising physician" means a doctor or doctors of medicine or podiatry permanently licensed in this state who assume legal and supervisory responsibility for the work or training of any physician assistant under his or her supervision;

(4) "Approved program" means an educational program for physician assistants approved and accredited by the committee on allied health education and accreditation on behalf of the American medical association or its successor; and

(5) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office.

(b) The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the extent to which physician assistants may function in this state. The rules shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a physician permanently licensed in this state, but that supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant’s normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the physician assistant may not be established. In promulgating the rules, the board shall allow the physician assistant to perform those procedures and examinations and in the case of certain authorized physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (1) of this section those categories of drugs submitted to it in the job description required by this section. Certain authorized physician assistants may pronounce death in accordance with the rules proposed by the board which receive legislative approval. The board shall compile and publish an annual report that
includes a list of currently licensed physician assistants and
their employers and location in the state.

(c) The board shall license as a physician assistant any
person who files an application together with a proposed job
description and furnishes satisfactory evidence to it that he or
she has met the following standards:

(1) He or she is a graduate of an approved program of
instruction in primary health care or surgery;

(2) He or she has passed the certifying examination for a
primary care physician assistant administered by the national
commission on certification of physician assistants and has
maintained certification by that commission so as to be cur-
rently certified;

(3) He or she is of good moral character; and

(4) He or she has attained a baccalaureate or master’s
degree.

(d) The board shall license as a physician assistant-midwife
any person who meets the standards set forth under subsection
(c) of this section and, in addition thereto, the following
standards:

(1) He or she is a graduate of a school of midwifery
accredited by the American college of nurse-midwives;

(2) He or she has passed an examination approved by the
board;

(3) He or she practices midwifery under the supervision of
a board certified obstetrician, gynecologist or a board certified
family practice physician who routinely practices obstetrics.

(e) The board may license as a physician assistant any
person who files an application together with a proposed job
description and furnishes satisfactory evidence that he or she is
of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the certifying examination for a physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified; or

(2) He or she had been certified by the board as a physician assistant then classified as “Type B”, prior to the first day of July, one thousand nine hundred eighty-three.

Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(f) When any graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants’ certifying examination: Provided, That the applicant shall sit for and obtain a passing score on the examination next offered following graduation from the approved program. No applicant shall receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination. A physician assistant who has not been certified by the national board of medical examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from
the national commission on certification of physician assistants
of his or her performance on the certifying examination, notify
the board in writing of his or her results. In the event of failure
of that examination, the temporary license shall expire and
terminate automatically, and the board shall so notify the
physician assistant in writing.

(g) Any physician applying to the board to supervise a
physician assistant shall affirm that the range of medical
services set forth in the physician assistant’s job description are
consistent with the skills and training of the supervising
physician and the physician assistant. Before a physician
assistant can be employed or otherwise use his or her skills, the
supervising physician and the physician assistant must obtain
approval of the job description from the board. The board may
revoke or suspend any license of an assistant to a physician for
cause, after giving that assistant an opportunity to be heard in
the manner provided by article five, chapter twenty-nine-a of
this code and as set forth in rules duly adopted by the board.

(h) The supervising physician is responsible for observing,
directing and evaluating the work, records and practices of each
physician assistant performing under his or her supervision. He
or she shall notify the board in writing of any termination of his
or her supervisory relationship with a physician assistant within
ten days of the termination. The legal responsibility for any
physician assistant remains with the supervising physician at all
times, including occasions when the assistant under his or her
direction and supervision, aids in the care and treatment of a
patient in a health care facility. In his or her absence, a super-
vising physician must designate an alternate supervising
physician, however, the legal responsibility remains with the
supervising physician at all times. A health care facility is not
legally responsible for the actions or omissions of the physician
assistant unless the physician assistant is an employee of the
facility.

(i) The acts or omissions of a physician assistant employed
by health care facilities providing inpatient or outpatient
services shall be the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

(j) A health care facility shall report in writing to the board within sixty days after the completion of the facility’s formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to the action. The health care facility shall also report any other formal disciplinary action taken against any physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(k) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him or her as a physician assistant. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon licensure of the physician assistant.

(l) A physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the eligibility and extent to which a physician assistant may prescribe at the direction of the supervising physician. The rules shall include, but not be limited to, the following:

(1) Provisions for approving a state formulary classifying pharmacologic categories of drugs that may be prescribed by a physician assistant:
(A) The following categories of drugs shall be excluded from the formulary: Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastic, radiopharmaceuticals, general anesthetics and radiographic contrast materials;

(B) Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill;

(C) Categories of other drugs may be excluded as determined by the board;

(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (g) of this section;

(3) The maximum dosage a physician assistant may prescribe;

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant, and in meeting the national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit a physician assistant to independently prescribe or dispense drugs.
(m) A supervising physician may not supervise at any one time more than three full-time physician assistants or their equivalent, except that a physician may supervise up to four hospital-employed physician assistants. No physician shall supervise more than four physician assistants at any one time.

A physician assistant may not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (l) of this section. A physician assistant may not perform any service that his or her supervising physician is not qualified to perform. A physician assistant may not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(n) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of one hundred dollars. A fee of fifty dollars is to be charged for the biennial renewal of the license. A fee of twenty-five dollars is to be charged for any change of supervising physician.

(o) Beginning with the biennial renewal forms completed by physician assistants and submitted to the board in the year one thousand nine hundred ninety-three, as a condition of renewal of physician assistant license, each physician assistant shall provide written documentation pursuant to rules promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion during
the preceding two-year period of continuing education, in the number of hours specified by the board by rule, designated as Category I by the American medical association, American academy of physician assistants or the academy of family physicians, and continuing education, in the number of hours specified by the board by rule, designated as Category II by the association or either academy. Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation shall result in the automatic suspension of any license as a physician assistant until the written documentation is submitted to and approved by the board.

(p) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(q) All physician assistants holding valid certificates issued by the board prior to the first day of July, one thousand nine hundred ninety-two, shall be considered to be licensed under this section.

CHAPTER 228

(Com. Sub. for S. B. 258 — By Senators Bowman, Kessler, Snyder and Boley)

[Passed March 26, 2001; in effect July 1, 2001. Approved by the Governor.]
AN ACT to amend and reenact article four, chapter thirty 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 four-b, all relating to professions and occupations; regulating the practice of dentistry and dental laboratory services generally; establishing licensure and permit requirements for dentists and dental hygienists; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article four, chapter thirty 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 four-b, all to read as follows:

Article
4B. Dental Laboratory Services.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-1. License required to practice.
§30-4-2. Short title.
§30-4-3. Definitions.
§30-4-4. Board of dental examiners.
§30-4-5. Powers of the board.
§30-4-6. Rule-making authority.
§30-4-7. Fees; special revenue account; administrative fines.
§30-4-8. License requirements; dentists.
§30-4-9. Dentist from another state; license to practice dentistry in this state.
§30-4-10. License requirements; dental hygienist.
§30-4-11. Dental hygienist from another state; license to practice dental hygiene in this state.
§30-4-12. License renewal; conditions of renewal.
§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.
§30-4-14. Temporary permits; teaching permit; dental hygienist.
§30-4-15. Scope of practice; dentist.
§30-4-16. Specialties; dentist.
§30-4-17. Scope of practice; dental hygienist.
§30-4-18. Scope of practice; dental assistant.
§30-4-20. Refusal to issue or renew, suspension or revocation of license; disciplinary action.
§30-4-21. Complaints; investigations.
§30-4-22. Hearing and judicial review.
§30-4-23. Reinstatement.
§30-4-24. Unlawful acts.
§30-4-25. Injunctions.
§30-4-26. Criminal proceedings; penalties.
§30-4-27. Single act evidence of practice.
§30-4-28. Dental corporations.
§30-4-29. Inapplicability of article.
§30-4-30. Termination date.

§30-4-1. License required to practice.

In order to protect public health and safety, any person practicing or offering to practice as a dentist or dental hygienist must submit evidence that he or she is qualified to practice and is licensed as provided in this article.

§30-4-2. Short title.

This article shall be known and may be cited as the “West Virginia Dental Practice Act”.

§30-4-3. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) “Approved dental hygiene program” means a program that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the commission on dental accreditation of the American dental association.

(2) “Approved dental school, college or dental department of a university” means a dental school, college or dental
department of a university that is approved by the board and is accredited or its educational standards are deemed by the board to be substantially equivalent to those required by the commission on dental accreditation of the American dental association.

(3) "Authorize" means that the dentist is giving permission or approval to dental auxiliary personnel to perform delegated procedures in accordance with the dentist's diagnosis and treatment plan.

(4) "Board" means the West Virginia board of dental examiners;

(5) "Certificate of qualification" means a certificate authorizing a dentist to practice a specialty.

(6) "Delegated procedures" means those procedures specified by law or by rule of the board and performed by dental auxiliary personnel under the direct supervision of a licensed dentist.

(7) "Dental assistant" means a person qualified by education, training and experience who aids or assists a dentist in the delivery of patient care in accordance with delegated procedures or who may perform nonclinical duties in the dental office: Provided, That no occupational title other than dental assistant shall be used to describe this auxiliary.

(8) "Dental auxiliary personnel" or "auxiliary" means dental hygienists and dental assistants who assist the dentist in the provision of oral health care services to patients.

(9) "Dental hygienist" means a person licensed by the board who provides preventative oral health care services to patients in the dental office: Provided, That no occupational title other than dental hygienist may be used to describe this auxiliary.
40 (10) "Dental laboratory" means a dental laboratory as defined in section one, article four-b of this chapter.

41 (11) "Dental office" means the place where the licensed dentist and dental auxiliary personnel are practicing dentistry.

42 (12) "Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function or aesthetics.

43 (13) "Dentist" means an individual licensed by the board to practice dentistry.

44 (14) "Dentistry" means the evaluation, diagnosis, prevention and treatment of diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures provided by a dentist.

45 (15) "Direct supervision" means supervision of dental auxiliary personnel provided by a licensed dentist who is physically present in the dental office.

46 (16) "Good moral character" means a lack of history of dishonesty.

47 (17) "License" means a license to practice dentistry or dental hygiene.

48 (18) "Licensee" means a person holding a license.

49 (19) "Specialty" means the practice of a certain branch of dentistry.

§30-4-4. Board of dental examiners.

1 (a) The "West Virginia Board of Dental Examiners" is hereby continued. The members of the board in office on the
date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b)(1) Commencing with the board terms beginning the first day of July, two thousand one, the board shall consist of nine members appointed for terms of five years by the governor with the advice and consent of the Senate. Six members must be licensed dentists, one member must be a licensed dental hygienist, one member must be a nationally certified dental assistant and one member must be a citizen member who is not licensed under the provisions of this article and who is not a dental assistant or a person who performs any services related to the practice of dentistry.

(2) Each licensed or certified member of the board, at the time of his or her appointment, must have held a license in this state or have been nationally certified for a period of not less than five years immediately preceding the appointment and each member must be a resident of this state during the appointment term.

(3) No person connected with a commercial entity that may derive financial gain from the profession of dentistry and no person connected with a dental college, school or dental department of a university is eligible for appointment to the board.

(4) Each appointment of a licensed dentist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees selected by the West Virginia dental association; each appointment of a licensed dental hygienist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees selected by the West Virginia dental hygienists' association; and each appointment of a dental assistant, whether for a full term or to
35 fill a vacancy, shall be made by the governor from among three
36 nominees selected by the West Virginia dental assistants' 
37 association. If the appointment is for a full term, the nomina-
38 tions must be submitted to the governor not later than eight 
39 months prior to the date on which the appointment becomes 
40 effective. If the appointment is to fill a vacancy, the nomina-
41 tions must be submitted to the governor within thirty days after 
42 a request for the nominations have been made by the governor 
43 to the president of the West Virginia dental association, 
44 president of the West Virginia dental hygienists' association or 
45 president of the West Virginia dental assistants' association. If 
46 the association fails to submit to the governor nominations for 
47 an appointment in accordance with the requirements of this 
48 section, the governor may make the appointment without the 
49 nominations.

(c) No member may serve more than two consecutive full 
50 terms and any member having served two full terms may not be 
51 appointed for one year after completion of his or her second full 
52 term. A member shall continue to serve until his or her succes-
53 sor has been appointed and qualified.

(d) The governor may remove any member from the board 
55 for neglect of duty, incompetency or official misconduct.

(e) Any member of the board immediately and automati-
58 cally forfeits his or her membership if he or she has his or her 
59 license to practice dentistry or dental hygiene suspended or 
60 revoked by the board, is convicted of a felony under the laws of 
61 any state or the United States or becomes a nonresident of this 
62 state.

(f) Each member of the board shall receive compensation 
63 and expense reimbursement in accordance with section eleven, 
64 article one of this chapter.
§30-4-5. Powers of the board.

1 The board has all the powers set forth in article one of this chapter and in addition may:

2 (1) Sue and be sued in its official name as an agency of this state;

3 (2) Hire, fix the compensation of and discharge the employees necessary to enforce the provisions of this article;

4 (3) Examine and determine the qualifications of any applicant for a license;

5 (4) Examine and determine the qualifications of any applicant for a certificate of qualification;

6 (5) Issue, renew, deny, suspend, revoke or reinstate licenses and discipline licensees;

7 (6) Issue, renew, deny, suspend, revoke or reinstate certificates of qualification and discipline holders of a certificate of qualification;

8 (7) Investigate alleged violations of the provisions of this article and article four-b of this chapter, reasonable regulations promulgated hereunder and orders and final decisions of the board;

9 (8) Conduct hearings upon charges calling for discipline of a licensee or revocation or suspension of a license;

10 (9) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

11 (10) Take all other actions necessary and proper to effectuate the purposes of this article.
§30-4-6. Rule-making authority.

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including, but not limited to, the following:

1. The examinations administered under this article;
2. Issuing and renewing a license;
3. Issuing temporary permits, teaching permits and dental intern or resident permits;
4. Specialities that a dentist may practice;
5. Issuing and renewing a certificate of qualification;
6. Denying, suspending, revoking, reinstating or limiting the practice of a licensee or certificate of qualification;
7. Continuing education requirements for licensees;
8. Delegated procedures to be performed by a dental hygienist;
9. Delegated procedures to be performed by a dental assistant;
10. Use of firm or trade names;
11. Dental corporations; and
12. Professional conduct requirements.

(b) All rules in effect on the effective date of this article shall remain in effect until they are withdrawn, revoked or amended.
§30-4-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the state treasury and be used for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the general revenue fund.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the state treasury.

§30-4-8. License requirements; dentists.

(a) The board shall issue a license to practice dentistry to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate of and has a diploma from an approved dental college, school or dental department of a university;

(4) Has passed an examination that tests the applicant's knowledge of subjects specified by the board by rule: Provided, that the board may recognize a certificate granted by the national board of dental examiners in lieu of the examination or part of the examination that the board requires;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application; and

(6) Has paid the application fee specified by rule.
(b) A license to practice dentistry issued by the board prior to the first day of February, two thousand one, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license issued prior to the first day of February, two thousand one, must renew the license pursuant to section twelve of this article.

§30-4-9. Dentist from another state; license to practice dentistry in this state.

The board may issue a license to practice dentistry to an applicant of good moral character who holds a valid license to practice dentistry from another state if the applicant demonstrates that:

1. He or she holds a license to practice dentistry in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

2. He or she holds a license to practice dentistry in another state which was granted after passing, in that or another state, an examination that is substantially equivalent to the examination required in this state;

3. He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license to practice dentistry and has never had a license to practice dentistry revoked;

4. He or she has not previously failed an examination for licensure as a dentist in this state; and

5. He or she has paid the application fee specified by rule.

§30-4-10. License requirements; dental hygienist.
(a) The board shall issue a dental hygienist license to an applicant who meets the following requirements:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Is a graduate with a degree in dental hygiene from an approved dental hygiene program of a college, school or dental department of a university;

(4) Has passed the national board dental hygiene examination, a regional or state clinical examination and a state law examination that tests the applicant’s knowledge of subjects specified by the board by rule;

(5) Has not been found guilty of cheating, deception or fraud in the examination or any part of the application; and

(6) Has paid the application fee specified by rule.

(b) A dental hygienist license issued by the board prior to the first day of February, two thousand one, shall for all purposes be considered a dental hygienist license issued under this section: Provided, That a person holding a dental hygienist license issued prior to the first day of February, two thousand one, must renew the license pursuant to section twelve of this article.

§30-4-11. Dental hygienist from another state; license to practice dental hygiene in this state.

The board may issue a dental hygiene license to an applicant who holds a valid dental hygiene license from another state if the applicant demonstrates that:
(1) He or she holds a dental hygiene license in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

(2) He or she holds a dental hygiene license in another state which was granted after passing, in that or another state, an examination that is substantially equivalent to the examination required in this state;

(3) He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her dental hygiene license and has never had a dental hygiene license revoked;

(4) He or she has not previously failed an examination for licensure as a dental hygienist in this state; and

(5) He or she has paid the application fee specified by rule.

§30-4-12. License renewal; conditions of renewal.

(a) The board shall renew a license to practice dentistry or dental hygiene for a one-year period after its issue in accordance with procedures specified by rule.

(b) The board shall charge a fee for each renewal of a license to practice dentistry or dental hygiene in amounts specified by rule.

(c) The board shall require as a condition for the renewal of a license to practice dentistry or dental hygiene that each dentist and dental hygienist participate in continuing professional education in accordance with the requirements specified by rule.

§30-4-13. Temporary permits; dental intern or resident permit; teaching permit; dentist.
(a) The board shall issue a temporary permit to practice dentistry to an applicant who:

(1) Has graduated from an approved dental college, school or dental department of a university with a degree in dentistry;

(2) Has been offered employment under the direct supervision of a licensed dentist;

(3) Has not taken the examination required to be granted a license to practice dentistry;

(4) Has paid the application fee specified by rule; and

(5) Meets the other qualifications specified by rule by the board.

(b) A temporary permit to practice dentistry may not be renewed and expires on the earlier of:

(1) The date the dentist ceases to be under the direct supervision of a licensed dentist; or

(2) Sixty days after the date that the first examination required by rule for a license to practice dentistry is administered.

(c) The board shall issue a dental intern or dental resident permit to an applicant who meets the qualifications set forth in subdivisions one, three, four and five of subsection (a) of this section and who has been accepted as a dental intern or dental resident by a licensed hospital or dental school in this state which maintains an established dental department under the supervision of a licensed dentist.

(d) The dental intern or dental resident permit may not be renewed and expires on the earlier of:
(1) The date the permit holder ceases to be a dental intern or dental resident; or

(2) One year after the date of issue.

(e) The board shall issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions one, three, four and five, subsection (a) of this section and who has been certified by the dean of a dental school located in this state to be a member of the teaching staff of the dental school.

(f) A teaching permit is valid for one year from the date of issue and may be renewed.

(g) While in effect, a temporary permit to practice dentistry, a permit to practice as a dental intern or dental resident and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a permit to practice as a dental intern or dental resident may not receive any fee for service other than a salary paid by the hospital or dental school and the holder of a teaching permit may only practice dentistry within the facilities of the dental school.

§30-4-14. Temporary permits; teaching permit; dental hygienist.

(a) The board may issue a temporary permit to practice dental hygiene to an applicant who:

(1) Has graduated from an approved dental hygiene program of a college, school or dental department of a university with a degree in dental hygiene;

(2) Has been offered employment as a dental hygienist;

(3) Has not taken the examination required to be granted a dental hygiene license;
(4) Has paid the application fee specified by rule; and

(5) Meets the other qualifications specified by rule by the board.

(b) A temporary permit to practice dental hygiene shall not be renewed and expires on the earlier of:

(1) The date the dental hygienist ceases to be employed; or

(2) Sixty days after the date that the first dental hygiene examination required by rule for a dental hygiene license is administered.

(c) The board may issue a teaching permit to an applicant who meets the qualifications set forth in subdivisions one, three, four and five, subsection (a) of this section and who has been certified by the dean of a dental school located in this state to be a member of the teaching staff of the dental school.

(d) A teaching permit is valid for one year from the date of issue and may be renewed.

(e) While in effect, a temporary permit to practice dental hygiene and a teaching permit are subject to the restrictions and requirements imposed by this article. In addition, the holder of a teaching permit may only practice dental hygiene within the facilities of the dental school.

§30-4-15. Scope of practice; dentist.

The practice of dentistry includes the following:

(1) Coordinating dental services to meet the oral health needs of the patient;
(2) Examining, evaluating and diagnosing diseases, disorders and conditions of the oral cavity, maxillofacial area and adjacent and associated structures;

(3) Treating diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(4) Providing services to prevent diseases, disorders and conditions of the oral cavity, maxillofacial area and the adjacent and associated structures;

(5) Fabricating, repairing or altering a dental prosthesis;

(6) Administering general anesthesia and parenteral conscious sedation in accordance with the provisions of article four-a of this chapter;

(7) Prescribing drugs necessary for the practice of dentistry;

(8) Executing and signing a death certificate when it is required in the practice of dentistry;

(9) Employing and supervising dental auxiliary personnel;

(10) Authorizing delegated procedures to be performed by dental auxiliary personnel; and

(11) Performing any other work included in the curriculum of an approved dental school, college or dental department of a university.

§30-4-16. Specialties; dentist.

(a) The board shall by rule define specialties in which a dentist may practice.
(b) A dentist may not represent to the public that he or she is a specialist in any branch of dentistry or limit his or her practice to any branch of dentistry unless first issued a certificate of qualification in that branch of dentistry by the board.

(c) The board shall by rule establish the qualifications and examination requirements for a dentist who desires to practice a specialty.

(1) The board may appoint not more than three specialists to examine the credentials of applicants for a certificate of qualification and each appointed specialist shall be paid a fee set by rule by the board.

(2) The board may appoint not more than three specialists to administer and grade the examination given to applicants for a certificate of qualification and each appointed specialist shall be paid a fee set by rule by the board.

(d) The board shall by rule establish the application procedure and fee for issuance of a certificate of qualification.

§30-4-17. Scope of practice; dental hygienist.

The practice of dental hygiene includes the following:

(1) Performing a complete prophylaxis, including the removal of any deposit, accretion or stain from the surface of a tooth or a restoration;

(2) Applying a medicinal agent to a tooth for a prophylactic purpose;

(3) Taking a dental X-ray;

(4) Instructing a patient on proper oral hygiene practice;
(5) Performing all delegated procedure of a dental hygienist specified by rule by the board; and

(6) Performing all delegated procedures of a dental assistant specified by rule by the board.

§30-4-18. Scope of practice; dental assistant.

A dental assistant may perform only those delegated procedures specified by rule by the board.


(a) Every licensed dentist within thirty days of changing his or her place of practice or establishing a practice at an additional dental office shall furnish the board with the address of the new or additional dental office.

(b) Every licensed dental hygienist within thirty days of changing his or her place of employment or establishing employment at additional dental office shall furnish the board with the name and address of the new or additional employers.

§30-4-20. Refusal to issue or renew, suspension or revocation of license; disciplinary action.

(a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license or practice privilege of a licensee and may take disciplinary action against a licensee who, after hearing, has been adjudged by the board as unqualified for any of the following reasons:

(1) The presentation to the board of any diploma, license or certificate illegally or fraudulently obtained, or one obtained from an institution which is not reputable, or one obtained from an unrecognized or irregular institution or state board;
(2) Suspension or revocation of a license issued by another state or territory on grounds which would be the basis of discipline in this state;

(3) Incompetent, negligent or willful misconduct in the practice of dentistry or dental hygiene, which shall include the departure from, or the failure to conform to, the minimal standards of acceptable and prevailing dental or dental hygiene practice in their area of expertise as shall be determined by the board. The board need not establish actual injury to the patient in order to adjudge a licensee guilty of this conduct;

(4) Engaging in conduct that indicates a lack of knowledge of, an inability to apply or the negligent application of principles or skills of dentistry or dental hygiene;

(5) Being guilty of gross ignorance or gross inefficiency in his or her profession;

(6) Being convicted of a felony; and a certified copy of the record of the court of conviction shall be sufficient proof of conviction;

(7) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board; or

(8) Being guilty of unprofessional conduct as contained in the American dental association principles of ethics and code of professional conduct. The following acts or any of them are conclusively presumed to be unprofessional conduct:
(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Employing what are known as "cappers" or "steerers" to obtain business;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicenced person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing, or offering, or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm or corporation holding himself, themselves or itself out in any manner contrary to this article;

(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;

(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;
(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television or United States mail, or in or by any other means of contacting individuals: Provided, that the provisions of this paragraph may not be construed so as to prohibit: (i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or (ii) educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(b) The term advertising, as used in this section, shall be construed to include any type of public media.

(c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fine not to exceed one thousand dollars per day per violation and mandatory attendance at continuing professional education seminars.

(d) This entire section is passed in the interest of the public health, safety and welfare and its provisions must be liberally construed to carry out its object and purpose.
§30-4-21. Complaints; investigations.

(a) Upon receipt of a written complaint filed against any dentist or dental hygienist, the board shall provide a copy of the complaint to the dentist or dental hygienist.

(b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the dentist or dental hygienist has violated any provision of this article or the rules, the board shall serve the dentist or dental hygienist with a written statement of charges and a notice specifying the date, time and place of hearing. The hearing shall be held in accordance with section twenty-two of this article.

§30-4-22. Hearing and judicial review.

(a) A hearing on a statement of charges shall be held in accordance with the provisions for hearing set forth in section eight, article one of this chapter and procedures specified by rule by the board by rule.

(b) Any dentist or dental hygienist adversely affected by any decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code and may appeal any ruling resulting from judicial review in accordance with article five, chapter twenty-nine-a of this code.

§30-4-23. Reinstatement.

Any dentist or dental hygienist against whom disciplinary action has been taken under the provisions of this article shall be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board by rule.
§30-4-24. Unlawful acts.

It is unlawful for any person not licensed under the provisions of this article to practice dentistry or dental hygiene in this state.

§30-4-25. Injunctions.

When, as a result of an investigation under section twenty-one of this article or otherwise, the board or any other interested person believes that any person has engaged, is engaging or is about to engage in the practice of dentistry or dental hygiene without a license, the board or any other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or practices and upon a showing that the person has engaged or is about to engage in any act or practice, an injunction, restraining order or another appropriate order may be granted by the court without bond.

§30-4-26. Criminal proceedings; penalties.

(a) When, by reason of an investigation under section twenty-one of this article or otherwise, the board has reason to believe that any person has knowingly violated section twenty-four of this article, the board may bring its information to the attention of the attorney general or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) Any person who knowingly violates any provision of section twenty-four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars or confined in the county or regional jail not more than one year, or both fined and imprisoned.

§30-4-27. Single act evidence of practice.
In any action brought under section twenty-five of this article or any proceeding initiated under section twenty-six of this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-4-28. Dental corporations.

(a) All dental corporations created prior to the first day of July, two thousand one, are hereby continued.

(b) On or after the first day of July, two thousand one, one or more dentists may organize and become a shareholder or shareholders of a dental corporation domiciled within this state under the terms and conditions and subject to the limitations and restrictions specified by rule.

(c) No corporation may practice dentistry, or any of its branches, or hold itself out as being capable of doing so without a certificate of authorization from the board.

(d) When the secretary of state receives a certificate of authorization to act as a dental corporation from the board, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of chapter thirty-one of this code, the secretary of state shall issue to the incorporators a certificate of incorporation for the dental corporation.

(e) A corporation holding a certificate of authorization must register annually, on or before the thirtieth day of June, on a form prescribed by the board and pay an annual registration fee in an amount specified by rule.

(f) A dental corporation may practice dentistry only through an individual dentist or dentists duly licensed to practice.
dentistry in this state, but the dentist or dentists may be employees rather than shareholders of the corporation.

(g) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board that any of its shareholders is no longer a duly licensed dentist or when any shares of the corporation have been sold or disposed of to a person who is not a duly licensed dentist: Provided, That the personal representative of a deceased shareholder has a period, not to exceed twelve months from the date of the shareholder's death, to dispose of the shares; but nothing contained herein may be construed as affecting the existence of the corporation or its right to continue to operate for all lawful purposes other than the practice of dentistry.

§30-4-29. Inapplicability of article.

The provisions of this article do not apply to:

(1) A duly licensed physician or surgeon in the practice of his or her profession when rendering dental relief in emergency cases, unless he or she undertakes to reproduce or reproduces lost parts of the human teeth or to restore or replace lost or missing teeth in the human mouth;

(2) A dental laboratory in the performance of dental laboratory services as that term is defined in section one, article four-b of this chapter while the dental laboratory, in the performance of the work, conforms in all respects to the requirements of article four-b and further does not apply to persons performing dental laboratory services under the direct supervision of a licensed dentist or under the direct supervision of a person authorized under this article to perform any of the acts in this article defined to constitute the practice of dentistry while the work is performed in connection with, and as a part
of, the dental practice of the licensed dentist or other authorized
person and for his or her dental patients;

(3) Students enrolled in and regularly attending any dental
college recognized by the state board of dental examiners,
provided their acts are done in the dental college and under the
direct and personal supervision of their instructor;

(4) Licensed or registered dentists of another state tempo-
urally operating a clinic under the auspices of a duly organized
and reputable dental college or reputable dental society, or to
one lecturing before a reputable society composed exclusively
of dentists; or

(5) The practice of dentistry by dentists whose practice is
confined exclusively to the service of the United States army,
the United States navy, the United States public health service,
the United States veteran’s bureau or any other authorized
United States government agency or bureau.

§30-4-30. Termination date.

The board shall terminate on the first day of July, two
thousand three, pursuant to the provisions of article ten, chapter
four of this code.

ARTICLE 4B. DENTAL LABORATORY SERVICES.

§30-4B-1. Definitions.
§30-4B-2. Work authorization required; contents; retention.
§30-4B-3. Denture identification.
§30-4B-4. Review of dental laboratory services.
§30-4B-5. Unlawful acts.
§30-4B-6. Injunction against unlawful acts.
§30-4B-7. Criminal proceedings; penalties.

§30-4B-1. Definitions.
As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) "Board" means the West Virginia board of dental examiners;

(2) "Dental laboratory" means a business performing dental laboratory services: Provided, That there is excluded from the definition dentists and other dental practitioners performing dental laboratory services and persons performing dental laboratory services under the direct supervision of a dentist or other dental practitioner in cases where dental laboratory services are performed in connection with, and as a part of, the dental practice of the dentist or other dental practitioner and for his or her dental patients;

(3) "Dental prosthesis" means an artificial appliance fabricated to replace one or more teeth or other oral or peri-oral structure in order to restore or alter function and aesthetics;

(4) "Dental laboratory service" means the fabricating, repairing or altering of any dental prosthesis;

(5) "Dental laboratory technician" means a person qualified by education, training and experience who has completed a dental laboratory technology education program and who fabricates, repairs or alters a dental prosthesis in accordance with a dentist's work authorization;

(6) "Dentist" means a dentist licensed pursuant to the provisions of article four of this chapter;

(7) "Other dental practitioner" means those persons excluded from the definition of the practice of dentistry under the provisions of subsections three, four and five, section twenty-nine, article four of this chapter and also those persons
who hold temporary permits to practice dentistry or teaching permits which have been issued to them under the provisions of section fourteen, article four of this chapter; and

(8) “Work authorization” means a written order for dental laboratory services which has been issued by a licensed dentist or other dental practitioner.

§30-4B-2. Work authorization required; contents; retention.

(a) No dental laboratory technician may perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

(b) Each work authorization must contain the following information: (1) The name and address of the dental laboratory to which it is directed; (2) the case identification; (3) a specification of the materials to be used; (4) a description of the work to be done and, if necessary, diagrams thereof; (5) the date of issue; and (6) the signature and address of the dentist or other dental practitioner issuing the work authorization. A separate work authorization must be issued for each patient of the dentist or other dental practitioner for whom a dental laboratory service is to be performed.

(c) Every work authorization must be made in duplicate with the original being delivered to the dental laboratory to which it is directed and the copy being retained in the office of the issuing dentist or other dental practitioner. A work authorization must be saved for a period of two years from its date of issue.

§30-4B-3. Denture identification.

Every dental laboratory and every dentist who engages in dental laboratory services and who fabricates any full upper or full lower set of prosthetic dentures must affix upon the
dentures, in a nonremovable manner, the name of the patient for whom the dentures are made and the initials of the dentist's state of practice and license identification number.

§30-4B-4. Review of dental laboratory services.

The board may review the dental laboratory services of a dental laboratory on a random and general basis without any requirement of a formal complaint or suspicion of impropriety.

§30-4B-5. Unlawful acts.

(a) It is unlawful for any dental laboratory either directly or indirectly: (1) To advertise that it is engaged in the business of performing dental laboratory services; (2) to advertise it performs dental laboratory services for members of the public; (3) to advertise a price for the performance of dental laboratory services; or (4) to advertise techniques used or materials employed by it in the performance of dental laboratory services: Provided, That this subsection does not prevent dental laboratories from advertising in dental journals or in other professional dental publications or from communicating directly to a dentist and other dental practitioner or from listing the dental laboratory in business and telephone directories if the business and telephone directory announcements are limited to name, address and telephone number and do not occupy more than the number of lines necessary to disclose the information, or from displaying the trade name and address of the dental laboratory on the door of its place of business or on name plates or door plates exhibited on the interior or exterior of the place of business.

(b) It is unlawful for any person, other than a dentist or other dental practitioner, to sell, offer for sale or furnish any dental prosthesis or other dental laboratory service to any person who is not a dentist or other dental practitioner.
It is unlawful for any person to perform dental laboratory services without a work authorization: Provided, That this subsection does not apply to a dentist or other dental practitioner, or to their employees working under their direct supervision, performing dental laboratory services as a part of their own dental practice and for their own dental patients.

It is unlawful for any dental laboratory to perform any dental laboratory service without the issuance of a work authorization by a dentist or other dental practitioner.

It is unlawful for any dental laboratory or dentist who fabricates a full upper or full lower set of prosthetic dentures not to affix upon the dentures, in a nonremovable manner, the name of the patient, the initials of the dentist's state of practice and license identification.

§30-4B-6. Injunction against unlawful acts.

When, as a result of a review under section four of this article or otherwise, the board or any other interested person believes that any person engaged, is engaging or is about to engage in any act or practice that violates the provisions of section five of this article, the board or any other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or practices and upon a showing that the person has violated or is about to violate the provisions of this article, an injunction, restraining order or another appropriate order may be granted by the court without bond.

§30-4B-7. Criminal proceedings; penalties.
(a) When, by reason of a review under section four of this article or otherwise, the board has reason to believe that any person has knowingly engaged in an act or practice that constitutes a violation of section five of this article, the board may bring its information to the attention of the attorney general or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) Any person or firm who knowingly violates any provision of section five of this article 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 not more than one year or both fined and imprisoned.


In any action or proceeding brought under section five or six of this article, evidence of the commission of a single act prohibited by this article is sufficient to justify an injunction, restraining order or conviction without evidence of a general course of conduct.

CHAPTER 229

(Com. Sub. for H. B. 3052 — By Delegates Border and Perdue)

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

AN ACT to amend and reenact sections one-b, three and twelve-b, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further
amend said article by adding thereto two new sections, designated sections five-b and sixteen-a, relating generally to pharmacies; codifying procedure to dispense prescribed substances more than one year after issuance of the prescription by internet pharmacies; providing for indirect supervision of registered pharmacy technicians during pharmacist’s break; providing for maximum break period in which a registered pharmacy technician may be indirectly supervised; limiting the physical area a pharmacist may take a break; providing for certain functions a registered pharmacy technician may perform while being indirectly supervised; requiring certain communication vehicles be implemented between a registered pharmacy technician and a pharmacist while on break; providing for certain protocols to be established by individual pharmacies in the event of an emergency while a pharmacist is on break; redefining practitioner as it affects pharmacists; deleting obsolete definition; and prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.
§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

§30-5-5b. Indirect supervision of registered pharmacy technicians during pharmacist’s break.
§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.
§30-5-16a. Filling of prescriptions more than one year after issuance.

§30-5-1b. Definitions.

The following words and phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

(a) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(b) "Board of pharmacy" or "board" means the West Virginia state board of pharmacy.

(c) "Compounding" means:

(1) The preparation, mixing, assembling, packaging or labeling of a drug or device:

(A) As the result of a practitioner’s prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice for sale or dispensing; or

(B) For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing;

(2) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(d) "Confidential information" means information maintained by the pharmacist in the patient record or which is communicated to the patient as part of patient counseling or
which is communicated by the patient to the pharmacist. This information is privileged and may be released only to the patient or to other members of the health care team and other pharmacists where, in the pharmacist’s professional judgment, the release is necessary to the patient’s health and well-being; to other persons or governmental agencies authorized by law to receive the privileged information; as necessary for the limited purpose of peer review and utilization review; as authorized by the patient or required by court order.

(e) “Deliver” or “delivery” means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(f) “Device” means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, “Caution: Federal or state law requires dispensing by or on the order of a physician.”

(g) “Dispense” or “dispensing” means the preparation and delivery of a drug or device in an appropriately labeled and suitable container to a patient or patient’s representative or surrogate pursuant to a lawful order of a practitioner for subsequent administration to, or use by, a patient.

(h) “Distribute” means the delivery of a drug or device other than by administering or dispensing.

(i) “Drug” means:

(1) Articles recognized as drugs in the USP-Di, facts and comparisons, physicians desk reference or supplements thereto, for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals;
(2) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

(3) Articles intended for use as a component of any articles specified in subsection (1) or (2) of this section.

(j) "Drug regimen review" includes, but is not limited to, the following activities:

(1) Evaluation of the prescription drug orders and patient records for:

(A) Known allergies;

(B) Rational therapy-contraindications;

(C) Reasonable dose and route of administration; and

(D) Reasonable directions for use.

(2) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(3) Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:

(A) Drug-drug;

(B) Drug-food;

(C) Drug-disease; and

(D) Adverse drug reactions.

(4) Evaluation of the prescription drug orders and patient records for proper use, including over use and under use and optimum therapeutic outcomes.
(k) "Intern" means an individual who is:

(1) Currently registered by this state to engage in the practice of pharmacy while under the supervision of a licensed pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or

(2) A graduate of an approved college of pharmacy or a graduate who has established educational equivalency by obtaining a foreign pharmacy graduate examination committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(3) A qualified applicant awaiting examination for licensure; or

(4) An individual participating in a residency or fellowship program.

(l) "Labeling" means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal law or regulation and state law or rule.

(m) "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than ten percent prescription drugs via the mail.

(n) "Manufacturer" means a person engaged in the manufacture of drugs or devices.

(o) "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or
independently by means of chemical or biological synthesis and
includes any packaging or repackaging of the substance(s) or
labeling or relabeling of its contents and the promotion and
marketing of the drugs or devices. Manufacturing also includes
the preparation and promotion of commercially available
products from bulk compounds for resale by pharmacies,
practitioners or other persons.

(p) “Nonprescription drug” means a drug which may be
sold without a prescription and which is labeled for use by the
consumer in accordance with the requirements of the laws and
rules of this state and the federal government.

(q) “Patient counseling” means the oral communication by
the pharmacist of information, as defined in the rules of the
board, to the patient to improve therapy by aiding in the proper
use of drugs and devices.

(r) “Person” means an individual, corporation, partnership,
association or any other legal entity, including government.

(s) “Pharmaceutical care” is the provision of drug therapy
and other pharmaceutical patient care services intended to
achieve outcomes related to the cure or prevention of a disease,
elimination or reduction of a patient’s symptoms or arresting or
slowing of a disease process as defined in the rules of the board.

(t) “Pharmacist” or “registered pharmacist” means an
individual currently licensed by this state to engage in the
practice of pharmacy and pharmaceutical care.

(u) “Pharmacist-in-charge” means a pharmacist currently
licensed in this state who accepts responsibility for the opera-
tion of a pharmacy in conformance with all laws and rules
pertinent to the practice of pharmacy and the distribution of
drugs and who is personally in full and actual charge of the
pharmacy and personnel.
(v) "Pharmacy" means any drugstore, apothecary or place
within this state where drugs are dispensed and sold at retail or
displayed for sale at retail and pharmaceutical care is provided
and any place outside of this state where drugs are dispensed
and pharmaceutical care is provided to residents of this state.

(w) "Pharmacy technician" means registered supportive
personnel who work under the direct supervision of a pharma-
cist who have passed an approved training program as described
in this article.

(x) "Practitioner" means an individual currently licensed,
registered or otherwise authorized by any state, territory or
district of the United States to prescribe and administer drugs
in the course of professional practices, including allopathic and
osteopathic physicians, dentists, physician’s assistants, optome-
trists, veterinarians, podiatrists and nurse practitioners as
allowed by law.

(y) "Preceptor" means an individual who is currently
licensed as a pharmacist by the board, meets the qualifications
as a preceptor under the rules of the board and participates in
the instructional training of pharmacy interns.

(z) "Prescription drug" or "legend drug" means a drug
which, under federal law, is required, prior to being dispensed
or delivered, to be labeled with either of the following state-
ments:

1. "Caution: Federal law prohibits dispensing without
   prescription";

2. "Caution: Federal law restricts this drug to use by, or on
   the order of, a licensed veterinarian"; or a drug which is
   required by any applicable federal or state law or rule to be
   dispensed pursuant only to a prescription drug order or is
   restricted to use by practitioners only.
(aa) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(bb) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(cc) "USP-DI" means the United States pharmacopeia-dispensing information.

(dd) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including, but not limited to, manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug trader and retail pharmacies that conduct wholesale distributions.

§30-5-3. When licensed pharmacist required; person not licensed pharmacist, pharmacy technician or licensed intern not to compound prescriptions or dispense poisons or narcotics; licensure of interns; prohibiting the dispensing of prescription orders in absence of practitioner-patient relationship.

(a) It is unlawful for any person not a pharmacist, or who does not employ a pharmacist, to conduct any pharmacy or store for the purpose of retailing, compounding or dispensing prescription drugs or prescription devices.

(b) It is unlawful for the proprietor of any store or pharmacy to permit any person not a pharmacist to compound or dispense prescriptions or prescription refills or to retail or dispense the poisons and narcotic drugs named in sections two, three and six, article eight, chapter sixteen of this code: Provided, That a licensed intern may compound and dispense prescriptions or prescription refills under the direct supervision
of a pharmacist: *Provided, however,* That registered pharmacy technicians may assist in the preparation and dispensing of prescriptions or prescription refills including, but not limited to, reconstitution of liquid medications, typing and affixing labels under the direct supervision of a licensed pharmacist.

(c) It is the duty of a pharmacist or employer who employs an intern to license the intern with the board within ninety days after employment. The board shall furnish proper forms for this purpose and shall issue a certificate to the intern upon licensure.

(d) The experience requirement for licensure as a pharmacist shall be computed from the date certified by the supervising pharmacist as the date of entering the internship. If the internship is not registered with the board of pharmacy, then the intern shall receive no credit for such experience when he or she makes application for examination for licensure as a pharmacist: *Provided,* That credit may be given for such unregistered experience if an appeal is made and evidence produced showing experience was obtained but not registered and that failure to register the internship experience was not the fault of the intern.

(e) An intern having served part or all of his or her internship in a pharmacy in another state or foreign country shall be given credit for the same when the affidavit of his or her internship is signed by the pharmacist under whom he or she served, and it shows the dates and number of hours served in the internship and when the affidavit is attested by the secretary of the state board of pharmacy of the state or country where the internship was served.

(f) Up to one third of the experience requirement for licensure as a pharmacist may be fulfilled by an internship in a foreign country.
(g) No pharmacist may compound or dispense any prescription order when he or she has knowledge that the prescription was issued by a practitioner without establishing an ongoing practitioner-patient relationship. An online or telephonic evaluation by questionnaire is inadequate to establish an appropriate practitioner-patient relationship. Provided, That this prohibition does not apply:

(1) In a documented emergency;

(2) In an on-call or cross-coverage situation; or

(3) Where patient care is rendered in consultation with another practitioner who has an ongoing relationship with the patient and who has agreed to supervise the patient’s treatment, including the use of any prescribed medications.

§30-5-5b. Indirect supervision of registered pharmacy technicians during pharmacist’s break.

(a) Indirect supervision of registered pharmacy technicians within a pharmacy may be permitted to allow pharmacists to take a break of no more than thirty minutes. The pharmacist may leave the pharmacy area but may not leave the building during the break.

(b) When a pharmacist is on break, pharmacy technicians may continue to prepare prescriptions for the pharmacist’s verification. No prescription may be delivered until the pharmacist has verified the accuracy of the prescription, and counseling, if required, has been provided to or refused by the patient.

(c) A pharmacy that permits indirect supervision of registered pharmacy technicians during a pharmacist’s break shall have either an interactive voice response system or a voice mail system installed on the pharmacy phone line in order to
receive new prescription orders and refill authorizations during the break.

(d) The pharmacy shall establish protocols that require a registered pharmacy technician to interrupt the pharmacist's break if an emergency arises.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

(a) As used in this section:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label or wrapping at the time of packaging.

(2) "Generic name" means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States food and drug administration and is in effect.

(3) "Substitute" means to dispense without the prescriber's express authorization a therapeutically equivalent generic drug product in the place of the drug ordered or prescribed.

(4) "Equivalent" means drugs or drug products which are the same amounts of identical active ingredients and same dosage form and which will provide the same therapeutic efficacy and toxicity when administered to an individual and is approved by the United States food and drug administration.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the
exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient; *Provided,* That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words “Brand Medically Necessary.” The following sentence shall be printed on the prescription form: “This prescription may be filled with a generically equivalent drug product unless the words ‘Brand Medically Necessary’ are written, in the practitioner’s own handwriting, on this prescription form.”: *Provided,* That “Brand Medically Necessary” may be indicated on the prescription order other than in the prescribing practitioner’s own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner shall indicate to the pharmacist that the prescription is “Brand Necessary” or “Brand Medically Necessary.” The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) No person may by trade rule, work rule, contract or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked or substituted; *Provided,* That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive
therapeutically equivalent generic drugs for brand name drugs
and that any pharmacist so refusing shall be subject to the
penalties prescribed in section twenty-two of this article.

(f) A pharmacist may substitute a drug pursuant to the
provisions of this section only where there will be a savings to
the buyer. Where substitution is proper, pursuant to this section,
or where the practitioner prescribes the drug by generic name,
the pharmacist shall, consistent with his or her professional
judgment, dispense the lowest retail cost, effective brand which
is in stock.

(g) All savings in the retail price of the prescription shall be
passed on to the purchaser; these savings shall be equal to the
difference between the retail price of the brand name product
and the customary and usual price of the generic product
substituted therefor: Provided, That in no event shall such
savings be less than the difference in acquisition cost of the
brand name product prescribed and the acquisition cost of the
substituted product.

(h) Each pharmacy shall maintain a record of any substitu-
tion of an equivalent generic name drug product for a pre-
scribed brand name drug product on the file copy of a written
or verbal prescription or chart order. Such record shall include
the manufacturer and generic name of the drug product se-
lected.

(i) All drugs shall be labeled in accordance with the
instructions of the practitioner.

(j) Unless the practitioner directs otherwise, the prescription
label on all drugs dispensed by the pharmacist shall indicate the
generic name using abbreviations, if necessary, and either the
name of the manufacturer or packager, whichever is applicable
in the pharmacist’s discretion. The same notation will be made
on the original prescription retained by the pharmacist.
(k) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;

2. Maintaining quality control standards equal to or greater than those of the United States food and drug administration;

3. Marking products with identification code or monogram; and

4. Labeling products with an expiration date.

(l) The West Virginia board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

(m) No pharmacist shall substitute a generic named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia board of pharmacy pursuant to this article or is found to be in violation of the requirements of the United States food and drug administration.
(n) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(o) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia board of pharmacy.

(p) The West Virginia board of pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section.

(q) Any person shall have the right to file a complaint with the West Virginia board of pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the board of pharmacy.

(r) Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is
violating any of the provisions of this section, it may, in
addition to any penalties prescribed by section twenty-two of
this article, suspend or revoke the permit of any person, firm,
corporation or copartnership to operate a pharmacy.

(s) No pharmacist complying with the provisions of this
section shall be liable in any way for the dispensing of a generic
named therapeutically equivalent drug, substituted under the
provisions of this section, unless the generic named therapeuti-
cally equivalent drug was incorrectly substituted.

(t) In no event where the pharmacist substitutes a drug
under the provisions of this section shall the prescribing
physician be liable in any action for loss, damage, injury or
death of any person occasioned by or arising from the use of the
substitute drug unless the original drug was incorrectly pre-
scribed.

(u) Failure of a practitioner to specify that a specific brand
name is necessary for a particular patient shall not constitute
evidence of negligence unless the practitioner had reasonable
cause to believe that the health of the patient required the use of
a certain product and no other.

§30-5-16a. Filling of prescriptions more than one year after
issuance.

No prescription order may be dispensed after twelve
months from the date of issuance by the practitioner. A pharma-
cist may fill the prescription after twelve months if the
prescriber confirms to the pharmacist that he or she still wants
the prescription filled and the pharmacist documents upon the
prescription that the confirmation was obtained.
AN ACT to amend and reenact section nine-a, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the board of pharmacy to amend its licensing procedure through legislative rule making to include biennial licenses.

Be it enacted by the Legislature of West Virginia:

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

§30-5-9a. Authorization for future fee modifications to be made by rule and authorizing biennial licenses by rule.

1 (a) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-nine, the board may set any fee authorized under this article by legislative rule, in accordance with article three, chapter twenty-nine-a of this code.

6 (b) The board may, by legislative rule, in accordance with article three, chapter twenty-nine-a of this code, amend its licensing procedure to include biennial licensing with a staggered implementation schedule and a fee structure.
AN ACT to amend article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to creating a nursing shortage study commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-18. Nursing shortage study commission; legislative findings; members, appointment and expenses; duties.

(a) The Legislature finds the following:

(1) Health care services are becoming complex and it is increasingly difficult for patients to access integrated services;

(2) Quality of patient care is jeopardized because of insufficient nursing staff;

(3) To ensure the adequate protection of patients in acute care settings, it is essential that qualified registered nurses and
other licensed nurses be accessible and available to meet the
needs of patients;

(4) In West Virginia, and across the country, concerns
about an increasing nursing shortage continue to grow;

(5) A number of factors contribute to the growing shortages
in qualified nursing personnel;

(6) The way care is delivered has changed dramatically
over the last decade with more people being treated in outpa-
tient settings, shorter and more intense lengths of stay in acute
and long-term care settings, and the development of alternatives
to nursing home care;

(7) These changes have led to a number of employment
options becoming available to nurses that did not exist previ-
ously, making it difficult for employers of nurses to recruit and
retain qualified nursing personnel;

(8) Severe cutbacks in the federal medicare program, state
budgetary pressures related to the medicaid program and
continued pressure from insurers to reduce their costs and to
retrospectively deny payment for services rendered, have: (A)
Made it extremely difficult for many providers to keep up with
other employers in salaries and benefits and to recruit and retain
qualified nursing personnel; and (B) increased stresses in the
work environment;

(9) The increasing reliance on temporary employment
agencies to meet nursing personnel needs further complicates
the situation as continuity of care is disrupted, quality of patient
care is jeopardized, and costs pressures are further increased;
and
(10) Because of the multifaceted nature of these problems, it is critical that all of the interested and affected parties cooperate and collaborate in the development of solutions.

(b) A nursing shortage study commission shall be created by the West Virginia board of examiners for registered professional nurses. The board shall appoint eleven members to the commission. The board shall appoint:

(1) Two individuals who are on the board of examiners for registered professional nurses, one of which is employed in a school of nursing;

(2) Two individuals that are employed as registered professional nurses in a hospital and who work primarily providing direct patient care;

(3) Two registered professional nurses who work as long-term care nurses, one of whom works in a nursing home and one of whom works for a home health agency, both of whom work primarily providing direct patient care;

(4) One administrator of a hospital in this state;

(5) One doctoral prepared nurse researcher;

(6) One nursing home administrator; and

(7) Two representatives of the public not currently or previously employed in hospital, nursing home or for a related entity.

(c) Members of the commission 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. Six of the appointed members is a quorum for the purpose of conducting business. The board shall designate a chair, who is not a public official. The commission shall conduct all meetings in accor-
dance with the open meeting law pursuant to article nine-a, chapter six of this code.

(d) The commission shall:
(1) Study the nursing shortage in West Virginia and ways to alleviate it, including, but not limited to:
(A) Evaluating mechanisms currently available in the state and elsewhere intended to enhance education, recruitment, and retention of nurses in the workforce and to improve quality of care;
(B) Assessing the impact of shortages in nursing personnel on access to, and the delivery of, quality patient care;
(C) Developing recommendations on strategies to reverse the growing shortage of qualified nursing personnel in the state, including:
(i) Determining what changes are needed to existing programs, current scholarship programs and funding mechanisms to better reflect and accommodate the changing health care delivery environment and to improve quality of care to meet the needs of patients;
(ii) Facilitating career advancement within nursing;
(iii) Identifying more accurately specific shortage areas in a more timely manner;
(iv) Attracting middle and high school students into nursing as a career; and
(v) Projecting a more positive and professional image of nursing.
AN ACT to amend and reenact sections two, three, three-a, three-b, four, five, six, seven, eight, nine and ten, article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven, all relating to the board of optometry; removing certain fees and providing they be established by legislative rule; increasing criminal fines; providing for licensure by endorsement; legislative rules; eliminating phrases no longer applicable; updating archaic language; and providing for continuation of the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. OPTOMETRISTS.

§30-8-2. Practice of optometry defined.
§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.
§30-8-3a. Registration of optometric corporations.
§30-8-3b. Practice of optometry by optometric corporations; limitations; optometrist-patient relationship not affected; biennial registration; penalty; severability.
§30-8-4. Registration prerequisite to practice of optometry; exceptions.
§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.
§30-8-6. Certificate of registration or exemption shall be displayed.
§30-8-7. Biennial renewal of registration; restoration of expired certificate.
§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.
§30-8-9. Offenses; penalties; jurisdiction of magistrates.
§30-8-10. Unlawful practice of optometry by or for a corporation, etc.; practice in connection with commercial or mercantile establishment; penalties; injunctions.
§30-8-11. Continuation of the board.

§30-8-2. Practice of optometry defined.

1 Any one or any combination of the following practices shall constitute the practice of optometry:

3 (a) The examination of the human eye, with or without the use of drugs, prescribable for the human eye which drugs may be used for diagnostic or therapeutic purposes, for topical application to the anterior segment of the human eye and, by any method other than surgery, to diagnose, treat or refer for consultation or treatment any abnormal condition of the human eye or its appendages;

10 (b) The employment without the use of surgery of any instrument, device, method or diagnostic or therapeutic drug intended for the purpose of investigating, examining, treating, diagnosing, improving or correcting any visual defect or abnormal condition of the human eye or its appendages;
(c) The prescribing, fitting, application, replacement, duplication or alteration of lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation, diagnostic or therapeutic drugs, or the furnishing or providing of any prosthetic device, or any other method other than surgery necessary to correct or relieve any defects or abnormal conditions of the human eye or its appendages.

(d) Nothing in this section shall be construed to permit an optometrist to perform surgery, use drugs by injection or to use or prescribe any drug for other than the specific purposes authorized by this article.

§30-8-3. Board of optometry; duties; disposition of moneys collected; compensation and expenses.

There shall be a state board of examiners in optometry, known as the “West Virginia board of optometry,” which shall consist of five optometrists and two lay members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Each optometric member of the board, at the time of his or her appointment, shall have been a resident and a registered practicing optometrist of this state for a period of not less than three years immediately preceding his or her appointment.

The optometric members of the board in office on the first day of July, two thousand one, shall, unless sooner removed, continue to serve until their successors have been appointed and have qualified. On or before the first day of July, two thousand one, and annually thereafter, as their respective terms expire, the governor shall appoint their successors so that one year he or she shall appoint one member and in each of the two succeeding years he or she shall appoint two members, each for a term of three years commencing on the first day of July. Any member shall be eligible for reappointment.
All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article shall be a charge against the general funds of this state.

The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, which are not inconsistent with any other provision or section of this article:

(a) For the proper performance of its duties;

(b) To govern the ethical practice of optometry for the safety, protection and welfare of the public; and

(c) To provide for examinations, licensure requirements, continuing education requirements, fees, and to further effectuate the provisions of this article, article one of this chapter, and any other provisions set forth in state or federal law.

§30-8-3a. Registration of optometric corporations.

When one or more optometrists duly registered to practice optometry in the state of West Virginia wish to form an optometric corporation, such optometrist or optometrists shall file a written application with the board of optometry, on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer is a duly registered optometrist, or if there be more than one that all the signers of such application are such duly registered optometrists. A fee as determined by legislative rule shall accompany each such application, no part of which may be refundable.
The board shall notify the secretary of state that a certificate of authorization has been issued to the individual or individuals signing such application, to form an optometric corporation.

When the secretary of state receives notification from the board of optometry that an individual or individuals, duly registered to practice optometry in the state of West Virginia have been issued a certificate of authorization, he or she shall attach such authorization to the agreement of incorporation and upon compliance by the corporation with the applicable provisions of chapter thirty-one of this code, shall notify the incorporators that such corporation, through a duly registered optometrist or optometrists, may engage in the practice of optometry.

§30-8-3b. Practice of optometry by optometric corporations; limitations; optometrist-patient relationship not affected; biennial registration; penalty; severability.

(a) An optometric corporation may practice optometry only through an individual optometrist or optometrists duly registered to practice optometry in the state of West Virginia, but such optometrist or optometrists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization is otherwise required. Nothing contained in sections three-a and ten and this section of this article is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the optometrist-patient relationship nor is it meant or intended to change in any way the personal character of the optometrist-patient relationship. A corporation holding such certificate of authorization shall register bienni-
ally, on or before the thirtieth day of June, on a form prescribed
by the board of optometry and shall pay a biennial registration
fee as determined by legislative rule.

(b) An optometric corporation holding a certificate of
authorization shall cease to engage in the practice of optometry
upon being notified by the board of optometry that any of its
shareholders is no longer a duly registered optometrist in this
state, or when any shares of such corporation have been sold or
disposed of to a person who is not a duly registered optometrist:
Provided, That the personal representative of a deceased
shareholder shall have a period, not to exceed twelve months
from the date of such shareholder's death, to dispose of such
shares; but nothing contained herein shall be construed as
affecting the existence of such corporation or its right to
continue to operate for all lawful purposes other than the
practice of optometry.

(c) No corporation shall practice optometry, or any of its
branches, or hold itself out as being capable of doing so,
without a certificate from the board, or after its certificate has
been revoked, or if suspended, during the term of such suspen-
sion. A certificate signed by the secretary of the board of
optometry to which is affixed the official seal of the board to
the effect that it appears from the records of the board that no
such certificate to practice optometry or any of its branches in
the state has been issued to any such corporation specified
therein or that such certificate has been revoked or suspended
shall be admissible in evidence in all courts of this state and
shall be prima facie evidence of the facts stated therein.

(d) Any officer, shareholder or employee of such corpora-
tion who participates in a violation of any provision of this
section shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than one thousand dollars nor
more than five thousand dollars.
§30-8-4. Registration prerequisite to practice of optometry; exceptions.

No person shall practice or offer to practice optometry in this state without first applying for and obtaining a certificate of registration for such purpose from the West Virginia board of optometry; but the following persons, firms and corporations are exempt from the operation of this article, except as hereinafter provided:

(a) Persons authorized under the laws of this state to practice medicine and surgery or osteopathy;

(b) Persons, firms and corporations who sell eyeglasses or spectacles in a store, shop or other permanently established place of business on prescriptions from persons authorized under the laws of this state to practice either optometry or medicine and surgery;

(c) Persons, firms and corporations who manufacture or deal in eyeglasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry.

§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.

(a) An applicant for registration shall present satisfactory evidence that he or she is at least twenty-one years of age, of good moral character and has graduated from a school or college of optometry accepted by said board. No school or college of optometry shall be accepted by the West Virginia board of optometry unless at first it has been accredited by a regional or professional accreditation organization which is recognized by the national commission on accreditation or the
United States commission of education. Each applicant shall submit to and be examined in all phases of optometry as is provided by a school or college of optometry.

(b) The West Virginia board of optometry shall be responsible to determine the educational training received by the applicant from the schools and colleges of optometry, the educational qualifications of each applicant and the administering of the examination and certification of each applicant commensurate with his or her education. No optometrist shall be registered or certified to practice optometry in the state of West Virginia in any area that is beyond the scope of his or her educational training as determined by the West Virginia board of optometry: Provided, That any optometrist presently registered in the state of West Virginia and who desires to employ the use of pharmaceutical agents must submit to the West Virginia board of optometry evidence of satisfactory completion of all necessary educational requirements as made mandatory by the West Virginia board of optometry: Provided, however, That the West Virginia board of optometry shall provide for continuing educational requirements to be completed from time to time by all optometrists desiring to employ the use of pharmaceutical agents.

(c) The board may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to provide for licensure by endorsement for applicants licensed by other states whose licensure requirements are equivalent to those of this state, and who meet the requirements as set forth in this article and in the legislative rules of the board.

§30-8-6. Certificate of registration or exemption shall be displayed.
Every person practicing optometry shall display his or her certificate of registration in a conspicuous place in the principal office wherein he or she practices optometry and, whenever required, shall exhibit such certificate to the board of examiners or its authorized representatives.

§30-8-7. Biennial renewal of registration; restoration of expired certificate.

Every registered optometrist who desires to continue in active practice or service shall, biennially, on or before the first day of August, of that year, renew his or her certificate of registration and pay a biennial renewal fee as determined by legislative rule. Every certificate of registration which has not been renewed shall expire on the first day of August of that year. A registered optometrist whose certificate of registration has expired for three years or less may have the same restored only upon payment of all required renewal and late fees for each lapsed year, and submit proof of accumulated continuing education hours for each year that has lapsed.

§30-8-8. Refusal to issue, suspension or revocation of certificate; false and deceptive advertising.

The board may either refuse to issue, or may refuse to renew, or may suspend or revoke any certificate of registration for any one, or any combination, of the following causes: Violation of a rule or regulation governing the ethical practice of optometry promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had; the obtaining of, or the attempt to obtain, a certificate of registration, or practice in the profession of optometry, or money, or any other thing of value, by fraudulent misrepresentation; gross malpractice; continued practice by a person knowingly having an infectious disease; alcohol or
substance abuse; advertising, practicing, or attempting to
practice under a name other than one’s own; advertising by
means of knowingly false or deceptive statements. All advertis-
ing, whether by means of newspapers, or in any manner,
whatsoever, of the following statements, or statements of
similar import, that are “false and deceptive” within the
meaning of this law, shall be prohibited. False and deceptive
advertising shall include, but not be limited to the following: (a)
Advertising “free examination of eyes,” or words of similar
import and meaning; (b) advertising frames or mountings for
glasses, contact lenses, or other optical devices which does not
accurately describe the same in all its component parts.

§30-8-9. Offenses; penalties; jurisdiction of magistrates.

Each of the following shall constitute a misdemeanor
punishable, upon conviction, for the first offense, by a fine of
not less than one thousand nor more than five thousand dollars
and, upon conviction for a second or subsequent offense, by a
fine of not less than five thousand nor more than ten thousand
dollars, or by imprisonment for not less than thirty nor more
than ninety days, or by both such fine and imprisonment, at the
discretion of the court: The practice of, or an attempt to
practice, optometry, without a certificate of registration as a
registered optometrist, except as hereinbefore provided;
permitting any person in one’s employ, supervision or control,
to practice optometry, unless such person has a certificate of
registration as a registered optometrist in the state of West
Virginia when such certificate is required by this article; the
obtaining of, or an attempt to obtain, a certificate of registra-
tion, or practice in the profession, or money, or anything of
value, by fraudulent misrepresentation; the making of any
willfully false oath or affirmation, whenever an oath or affirma-
tion is required by this article; the violation of the provisions of
section six of this article.
§30-8-10. Unlawful practice of optometry by or for a corporation, etc.; practice in connection with commercial or mercantile establishment; penalties; injunctions.

Except as provided in sections three-a and three-b of this article, no corporation or voluntary association shall practice, or assume to practice, or in any manner hold itself out to the public as being entitled to practice the profession of optometry, or advertise the title of optometrist in such manner as to convey the impression to the public that it is entitled to practice optometry, or furnish optometric advice and services, or advertise that, either alone or together with or by or through any person, whether a duly registered and licensed optometrist or not, it has, owns, conducts or maintains an office or place for practice of optometry. Except as provided in sections three-a and three-b of this article, no duly registered and licensed optometrist shall associate himself or herself with any corporation or voluntary association for the practice of optometry, or in any manner practice such profession, on a salary or commission basis, for any such corporation or voluntary association. Any corporation or voluntary association violating any of the provisions of this section, or any officer, trustee, director, agent, or employee of such corporation or voluntary association who, either directly or indirectly, engages in any of the acts herein prohibited, or assists such corporation or voluntary association to do such prohibited acts, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars. The fact that any such officer, trustee, director, agent or employee shall be a duly registered and licensed optometrist shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein, nor shall such fact be a defense upon the trial of any of the persons hereinbefore mentioned for a violation of this section. Any duly registered and licensed optometrist who shall violate the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than one thousand dollars nor more than five
thousand dollars, and each and every day such violation
continues shall constitute a separate offense; and in addition to
the foregoing penalties, such offending optometrist shall have
his or her license suspended for a period of one year by the
court in which such conviction is had: Provided, That this
section shall not apply to a partnership of two or more duly
registered and licensed optometrists who practice under their
own names.

It shall be unlawful for any registered optometrist to
practice his or her profession as an employee, lessee, or
sublessee of any commercial or mercantile establishment or to
practice his or her profession in connection therewith, or to
advertise either in person or through any commercial or
mercantile establishment that he or she is a duly registered
practitioner, and is practicing or will practice optometry as an
employee, lessee, or sublessee of any such commercial or
mercantile establishment or in connection therewith. But
nothing herein shall be construed to prohibit or prevent the
rendering of professional services to the officers and employees
of any person, firm or corporation by an optometrist, whether
or not the compensation for such services is paid by the officers
and employees, or by the employer, or jointly by all or any of
them. Any person violating this provision shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
less than one thousand nor more than five thousand dollars, and
each and every day such violation continues shall constitute a
separate offense.

The circuit court of any county in which the violation
occurred shall have jurisdiction to restrain by injunction the
violation of any of the provisions of this article.

§30-8-11. Continuation of the board.
The West Virginia board of optometry shall continue to exist until the first day of July, 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.

CHAPTER 233

(Com. Sub. for H. B. 2503 — By Delegates Douglas, Kuhn, Manchin, Marshall, Perdue, Azinger and Stalnaker)

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of the practice of accountancy generally; establishing licensure requirements; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. ACCOUNTANTS.

§30-9-1. License required to practice.
§30-9-2. Definitions.
§30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal of members; compensation of members.
§30-9-4. Powers of the board.
§30-9-5. Rule-making authority.
§30-9-6. Fees; special fund; administrative fines.
§30-9-7. Issuance of certificate; certificates issued prior to the first day of July, two thousand one.

§30-9-8. Education, examination and experience certificate requirements.

§30-9-9. Substantial equivalency certificate requirements.

§30-9-10. Not substantially equivalent certificate requirements.

§30-9-11. Foreign designation certificate requirements.

§30-9-12. Certificate renewal; conditions of renewal.


§30-9-17. Issuance and renewal of permits.

§30-9-18. Notification of changes in firm ownership; revocation of permit.


§30-9-20. Refuse to issue or renew; suspension, revocation of license; disciplinary action.

§30-9-21. Complaints; investigation.

§30-9-22. Hearing; judicial review; notification to out-of-state board of accountancy; costs of proceedings.

§30-9-23. Reinstatement.

§30-9-24. Licensees' working papers; clients' records.

§30-9-25. Commissions, referral fees and contingent fees.


§30-9-27. Injunctions against unlawful acts.

§30-9-28. Criminal proceedings; penalties.


§30-9-30. Accounting corporations.

§30-9-31. Inapplicability of article.

§30-9-32. Termination date.

§30-9-1. License required to practice.

1. To protect the public interest in receiving accurate and reliable financial information and assurance, certified public accountants, public accountants, and accounting firms are required to be licensed as provided in this article.

§30-9-2. Definitions.
As used in this article, the following words and terms have
the following meanings, unless the context or associated
language clearly indicates otherwise:

(1) “Assurance” means any act or action, whether written
or oral, expressing an opinion or conclusion about the reliability
of a financial statement or about its conformity with any
financial accounting standards.

(2) “Attest services” means providing any audit or review
of a financial statement or any examination of prospective
financial information performed in accordance with applicable
statements on standards.

(3) “Audit” means expressing an opinion about the fairness
of presentation of financial statements in accordance with
applicable statements on standards.

(4) “Authorization” means an authorization issued pursuant
to this article that entitles a permit holder or an individual
practitioner to perform attest or compilation services.

(5) “Board” means the West Virginia board of accountancy.

(6) “Business entity” means any corporation, partnership,
limited partnership, limited liability partnership, professional
limited liability partnership, limited liability company, profes-
sional limited liability company, joint venture, business trust or
any other form of business organization. The term “business
entity” includes a firm.

(7) “Certificate” means a certificate as a certified public
accountant issued or renewed by the board pursuant to this
article or corresponding provisions of prior law.

(8) “Certified public accountant” or “CPA” means the
holder of a certificate.
(9) "Client" means a person or entity that agrees with a licensee or licensee's employer to receive any professional service.

(10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person.

(11) "Compilation services" means providing a service performed in accordance with applicable statements on standards that presents, in the form of a financial statement, information that is the representation of management without an expression of assurance on the statement: Provided, That this definition does not apply to the use of the term "compilation" in section thirty-one of this article.

(12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of the service. A fee fixed by a court, taxing authority or other public authority is not a contingent fee.

(13) "Examination," when used with reference to prospective financial statements, means expressing an opinion about the fairness of presentation of financial information in accordance with applicable statements on standards.

(14) "Financial statement" means a writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

(15) "Firm" means any business entity, including an accounting corporation, in which two or more certified public
accountants or public accountants hold an ownership or membership interest, in terms of the financial interests and voting rights of all partners, officers, shareholders, members or managers, and the primary business activity of which is the provision of professional services to the public by certified public accountants or public accountants.

(16) "Firm ownership requirements" means, with respect to any firm, the requirements that: (A) Sixty percent of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs either to certified public accountants or public accountants who have met the continuing professional education requirements of subsection (b), section twelve of this article and who are not subject to the exemption or limitation set forth in subdivisions (1) or (2) of subsection (b), section twelve of this article, but not a combination of certified public accountants and public accountants; and (B) all owners of the firm who are not certified public accountants or public accountants are active participants in the firm.

(17) "Foreign" means any country other than the United States.

(18) "Good moral character" means lack of a history of dishonesty or felonious activity.

(19) "Individual practitioner" means a certified public accountant or a public accountant who offers professional services to the public but who does not practice in a firm.

(20) "License" means a certificate, permit, registration or authorization.

(21) "Licensee" means the holder of a license.
(22) "Manager" means a manager of a limited liability company.

(23) "Member" means a member of a limited liability company.

(24) "Nonlicensee" means a person or business entity that does not hold a license.

(25) "Out-of-state certificate" means a valid certificate as a certified public accountant or equivalent designation issued or renewed under the laws of another state: Provided, That "out-of-state certificate" does not include any certificate as a certified public accountant or equivalent designation that was issued or renewed solely by virtue of a holder's prior status as a public accountant or its equivalent in the state of issuance and not by virtue of the holder's having met the certification requirements of the state of issuance.

(26) "Out-of-state permit" means a valid permit as a firm of certified public accountants or another designation equivalent to a permit issued or renewed by the board and that is issued or renewed under the laws of another state.

(27) "Peer Review" means a study, appraisal, or review of one or more aspects of the professional work of a licensee by a person who holds a certificate or an out-of-state certificate and who is not affiliated with the licensee being reviewed.

(28) "Permit" means a permit issued to a firm pursuant to this article.

(29) "Professional services" means those services that involve the specialized knowledge and skills of a certified public accountant or a public accountant.
(30) "Public accountant" means a person holding a registration who is not a certified public accountant.

(31) "Referral fee" means compensation for recommending or referring any service of a licensee to any person.

(32) "Registration" means a registration as a public accountant issued by the board pursuant to prior law governing the registration of public accountants and renewed by the board pursuant to this article.

(33) "Report," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance.

(34) "Rule" means any rule proposed for legislative approval by the board pursuant to this article.

(35) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam.

(36) "Substantial equivalency" or "substantially equivalent" means or refers to a determination by the board that the education, examination and experience requirements contained in the statutes or rules of another state are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act, or that an individual certified public accountant’s education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act.

(37) "Substantial equivalency practitioner" means any individual holding an out-of-state certificate who has notified the board of his or her intent to practice accountancy in the state
under the provisions of this article and has complied with the provisions of section sixteen of this article.

(38) "Uniform accountancy act" means the uniform accountancy act, third edition, revised (November 1999), jointly published by the American institute of certified public accountants and the national association of state boards of accountancy.

§30-9-3. Board of accountancy; appointment; terms, qualifications of members; removal of members; compensation of members.

(a) The West Virginia board of accountancy is hereby continued.

(b) (1) Commencing with the board terms beginning the first day of July, two thousand one, the board shall consist of seven members appointed for terms of three years by the governor with the advice and consent of the Senate. Five members must be certified public accountants; one member must be a public accountant so long as twenty-five or more public accountants are registered by the board, but if there are fewer than twenty-five public accountants registered by the board, then the member may be either a public accountant or a certified public accountant; and one member must be a citizen member who is a resident of this state, who is not licensed under the provisions of this article and who also is not a bookkeeper, enrolled agent or a person who provides or offers to provide to the public any bookkeeping, tax preparation, financial advisory or insurance service: Provided, That the members of the board in office on the first day of July, two thousand one, shall continue to serve until their respective terms expire.
(2) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment and each member must be a resident of this state during the appointment term.

(3) Each appointment of a public accountant, whether for a full term or to fill a vacancy, must be made by the governor from among three nominees selected by the West Virginia public accountants association and each appointment of a certified public accountant, whether for a full term or to fill a vacancy, must be made by the governor from among three nominees selected by the West Virginia society of certified public accountants: Provided, That when the appointment of a certified public accountant is to fill the seat held on the first day of July, two thousand one, by a public accountant, then the appointment, whether for a full term or to fill a vacancy, must be made by the governor from among three nominees selected by the West Virginia public accountants association. When the appointment is for a full term, the nominations must be submitted to the governor not later than eight months prior to the date on which the appointment will become effective. When the appointment is to fill a vacancy, the nominations must be submitted to the governor within ten days after a request for the nominations has been made by the governor to the president of the West Virginia society of certified public accountants or president of the West Virginia public accountants association. If the society or the association fails to submit to the governor nominations for an appointment in accordance with the requirements of this section, the governor may make the appointment without the nominations.

(c) No member may serve more than two consecutive full terms, and any member having served two full terms may not be appointed for one year after completion of his or her second
full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(d) If a board member is unable to complete a term, the governor shall appoint a person of similar qualifications to complete the unexpired term: Provided, That if the board member is a certified public accountant or public accountant, the governor shall appoint a person from any nominees submitted pursuant to subdivision (3), subsection (b) of this section. Each vacancy occurring on the board must be filled by appointment within sixty days after the vacancy is created.

(e) The governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(f) Any member of the board shall immediately and automatically forfeit his or her membership if he or she has his or her certificate or registration suspended or revoked by the board, is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(g) Each member of the board shall receive compensation and expense reimbursement in accordance with section eleven, article one of this chapter.

§30-9-4. Powers of the board.

The board has all the powers set forth in article one of this chapter, and in addition may:

(1) Sue and be sued in its official name as an agency of this state;

(2) Hire, fix the compensation of and discharge the employees necessary for the administration of this article;
(3) Examine and determine the qualifications of any applicant for a license;

(4) Issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary action against licensees;

(5) Investigate alleged violations of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board;

(6) Conduct hearings upon charges calling for the revocation or suspension of a license or take disciplinary action against a licensee, firm or substantial equivalency practitioner;

(7) Cooperate with the appropriate authorities in other states in the investigation and enforcement of violations of this article or comparable acts of other states;

(8) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code; and

(9) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-9-5. Rule-making authority.

(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including, but not limited to, the following:

(1) The education required of an applicant;

(2) The experience required of an applicant;

(3) The examination administered under this article;
8     (4) Issuing or renewing a certificate, registration, permit or authorization;
9
10    (5) Denying, suspending, revoking, or reinstating a certificate, registration, permit or authorization;
11
12    (6) The conduct of investigations;
13
14    (7) Firm ownership requirements;
15
16    (8) Accounting corporations;
17
18    (9) Substantial equivalency requirements;
19
20    (10) Continuing professional education requirements for licensees, including exemptions;
21
22    (11) Peer review requirements;
23
24    (12) Professional conduct requirements;
25
26    (13) Identifying professional services required to be performed in accordance with the applicable statements on standards;
27
28    (14) Use of the titles “certified public accountant,” “CPA,” “public accountant” and “PA”;
29
30    (15) Use of commissions, referral fees and contingent fees;
31
32    (16) Fees for the issuance and renewal of a certificate, registration, permit or authorization and other fees authorized by this article; and
33
34    (17) Other rules the board considers necessary and proper for implementing the provisions of this article.
(b) All rules in effect on the first day of July, two thousand one, will remain in effect until they are superseded.

§30-9-6. Fees; special fund; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board must be deposited in the separate special fund which has been established for the board in the state treasury and must be used for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special fund from year to year. No compensation or expense incurred under this article is a charge against the general revenue fund.

(b) Any amounts received as administrative fines imposed pursuant to this article must be deposited into the general revenue fund of the state treasury.

§30-9-7. Issuance of certificate; certificates issued prior to the first day of July, two thousand one.

(a) The board shall issue a certificate to an applicant of good moral character who demonstrates that:

(1) He or she meets the qualifications for a certificate set forth in section eight of this article;

(2) He or she holds an out-of-state certificate and meets the requirements of section nine of this article;

(3) He or she holds an out-of-state certificate, does not meet the requirements of section nine of this article but does meet the requirements of section ten of this article; or

(4) He or she holds a substantially equivalent foreign designation and meets the requirements of section eleven of this article.
(b) Certificates will initially be issued for a period to expire on the thirtieth day of June following the date of issue.

(c) Applications for the issuance of certificates must be made in the form specified by the board by rule: Provided, That the application must require an applicant to list all states in which he or she has applied for or holds an out-of-state certificate and any past denial, revocation or suspension of an out-of-state certificate.

(d) The board shall charge an application fee in an amount specified by rule.

(e) A certificate issued by the board prior to the first day of July, two thousand one, will for all purposes be considered a certificate issued under this section: Provided, That a person holding a certificate issued prior to the first day of July, two thousand one, must renew the certificate pursuant to section twelve of this article.

§30-9-8. Education, examination and experience certificate requirements.

The board shall issue a certificate to an applicant of good moral character who meets the following requirements:

(1) Before applying for the examination prescribed in subdivision (2) of this section, the applicant has met the following educational requirements:

(A) For an applicant making his or her initial application for examination prior to the fifteenth day of February, two thousand, a baccalaureate degree or its equivalent; or

(B) For an applicant making his or her initial application for examination on or after the fifteenth day of February, two thousand, at least one hundred fifty semester hours of college
education including a baccalaureate or higher degree conferred by a college or university;

(2) Has passed the uniform certified public accountant examination published by the American institute of certified public accountants or its successor and any additional examination required by the board by rule that tests the applicant’s knowledge of subjects related to the practice of accounting; and

(3) Demonstrates that he or she has had one year of experience in providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. The experience requirement may be satisfied by employment in private practice, government, industry, academia or public practice. An applicant’s experience must be verified by a licensee and must meet requirements specified by rule.

§30-9-9. Substantial equivalency certificate requirements.

The board shall issue a certificate to an applicant who holds a valid out-of-state certificate if the state of issuance extends similar privileges to holders of certificates under circumstances similar to those described in this section and if the board determines that:

(1) The state of issuance of the out-of-state certificate has certified public accountant certification requirements that are substantially equivalent to the certified public accountant certification requirements of the uniform accountancy act; or

(2) The applicant has individual qualifications that are substantially equivalent to the certified public accountant certification requirements of the uniform accountancy act.

§30-9-10. Not substantially equivalent certificate requirements.
The board shall issue a certificate to an applicant of good moral character who holds a valid out-of-state certificate but who does not qualify for a certificate under the provisions of section nine of this article if the applicant meets the education, experience, examination and continuing education requirements specified by the board by rule.

§30-9-11. Foreign designation certificate requirements.

The board shall issue a certificate to an applicant of good moral character who holds a foreign designation in public accountancy if:

1. The foreign authority that granted the designation regulates the practice of public accountancy and allows a person holding a certificate issued by this state to obtain the foreign authority’s comparable designation; and

2. The applicant meets the education, examination, experience and continuing education requirements specified by the board by rule.

§30-9-12. Certificate renewal; conditions of renewal.

(a) The board shall renew a certificate for a one-year period beginning on the first day of July of each year after its issuance in accordance with renewal procedures and fees specified by rule: Provided, That an applicant for renewal of a certificate shall list on his or her application all states and foreign jurisdictions in which he or she has applied for or held an out-of-state certificate or foreign designation and any denial, revocation or suspension of an out-of-state certificate or foreign designation.

(b) The board shall require as a condition for the renewal of a certificate that each certified public accountant participate in continuing professional education in accordance with the
requirements specified by rule, subject to the following exemptions and limitations:

(1) The board shall by rule exempt from the continuing professional education requirements set forth in this subsection any certified public accountant who does not perform or offer to perform any professional service to the public, either directly or indirectly through his or her employer.

(2) Any certified public accountant receiving the exemption from continuing professional education requirements must place the word "inactive" adjacent to his or her "CPA" title on any business card, telephone directory listing, letterhead or any other similar document or device, with the exception of the licensee’s certificate on which the "CPA" title appears: Provided, That a certified public accountant receiving the exemption from continuing professional education requirements who has completely discontinued his or her performance of professional services, who has no active management or supervisory responsibilities in a firm, and who is at least sixty-two years of age is not required to place the word "inactive" or any other word adjacent to his or her "CPA" title on any business card, telephone directory listing, letterhead or any other similar document or device.

(3) The board may by rule phase in continuing professional education requirements over a period of three years for any certified public accountant who, as of the first day of July, two thousand one, has not been subject to continuing professional education requirements and who subsequently elects to perform or offers to perform any professional service to the public during a subsequent certificate renewal period within the three-year phase-in period.

Each licensee and each substantial equivalency practitioner must notify the board, within thirty days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a license or out-of-state certificate.


A holder of an out-of-state certificate who intends to establish his or her principal place of business in this state must first apply for the issuance of a certificate.


A person who on the first day of July, two thousand one, holds a registration as a public accountant issued under prior law is entitled to have the registration renewed under the same terms, upon fulfillment of the same continuing professional education requirements, on the same renewal schedule and subject to the same restrictions and the payment of the same fees that are required for the renewal of a certificate under section twelve of this article. Any registration not so renewed will expire on the thirtieth day of June, two thousand two.


(a) An individual whose principal place of business is not in this state and who holds an out-of-state certificate has all the rights and privileges of a certificate holder of this state without the need to obtain a certificate if the other state extends similar privileges to a holder of a certificate, and:

(1) The board has determined by rule that the state that issued the out-of-state certificate has certification requirements that are substantially equivalent to the certification requirements of the uniform accountancy act; or
(2) The board has verified that the individual's qualifications are substantially equivalent to the certification requirements of the uniform accountancy act.

(b) No less than ten days prior to performing or offering to perform any services in the state, an individual seeking to practice under the provisions of this section must file a notice with the board that: (A) Includes the individual's name, principal business address, out-of-state certificate number and state of issuance, and any other information that the board may require by rule; (B) discloses any pending disciplinary action or any past denial, revocation or suspension of the out-of-state certificate; and (C) attaches any fee that the board may require by rule.

(c) No later than the first day of July of the second calendar year following the substantial equivalency practitioner's most recent filing of the notice required under subsection (b) of this section or with greater or lesser frequency as the board may require by rule, a substantial equivalency practitioner must file a notice with the board containing the information and attaching the fee, if any, required in subsection (b) of this section if the substantial-equivalency practitioner expects or intends to continue to offer services in the state.

(d) Any individual performing or offering to perform any services in the state as a substantial equivalency practitioner is subject to the following:

(1) Jurisdiction of the board concerning all matters within the scope of this article;

(2) Compliance with the provisions of this article and applicable rules;

(3) The appointment of the secretary of state as his or her agent upon whom process may be served in any action or
proceeding against the individual arising out of any transaction or operation connected with or incidental to services performed in this state; and

(4) The appointment of the state board of accountancy of the state of issuance of his or her out-of-state certificate as his or her agent upon which process may be served in an action or proceeding by the board.

§30-9-17. Issuance and renewal of permits.

(a) The board shall issue a permit to a firm that demonstrates:

(1) Each partner, officer, shareholder, member or manager of the firm whose principal place of business is in this state and who performs or offers to perform professional services in this state holds a certificate or a registration; and

(2) The firm meets firm ownership requirements.

(b) An application for the issuance of a permit must be made in the form specified by the board by rule and must include the following information:

(1) The names of all partners, officers, shareholders, members or managers of the firm whose principal place of business is in this state;

(2) The location of each office of the firm within this state and the name of the certified public accountant or public accountant in charge of each office; and

(3) Any issuance, denial, revocation or suspension of an out-of-state permit.

(c) Permits will initially be issued for a period to expire on the thirtieth day of June following the date of issue.
(d) The board shall renew a permit for a one-year period beginning on the first day of July of each year after initial issuance in accordance with the requirements for initial issuance of a permit in this section.

(e) The board shall charge an application fee for the initial issuance or renewal of a permit in an amount specified by rule.

§30-9-18. Notification of changes in firm ownership; revocation of permit.

(a) A permit holder must notify the board in writing, within thirty days after its occurrence, of any change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this state, any change in the number or location of offices within this state, any change in the identity of the persons in charge of those offices, and any issuance, denial, revocation or suspension of a permit or equivalent designation by any other state.

(b) The board shall suspend or revoke the permit of any firm that ceases to meet firm ownership requirements due to changes in firm ownership or personnel due to the death or retirement of a partner, officer, shareholder, member or manager and that fails to take corrective action in the manner and during the time period specified by rule.


(a) Commencing with the first day of July, two thousand one, no person or business entity may provide attest or compilation services without having first obtained an authorization issued by the board. An applicant may apply to provide attest services or compilation services or both.

(b) Applications for the issuance of authorizations must be made in the form specified by the board by rule.
(c) Authorizations will initially be issued for a period to expire on the thirtieth day of June following the date of initial issuance.

(d) The board shall issue an authorization to a permit holder that demonstrates that:

(1) Any certified public accountant or public accountant who signs or authorizes someone to sign a report on financial statements on behalf of the permit holder meets the competency requirements set forth in the professional standards for those services specified by rule;

(2) All attest and compilation services rendered by the permit holder in this state are verified by a certified public accountant or a public accountant; and

(3) The permit holder is undergoing a peer review program that conforms with applicable rules.

(e) A firm may simultaneously apply for the issuance or renewal of a permit and the issuance or renewal of an authorization by demonstrating that the firm meets the requirements of section seventeen of this article and subsection (d) of this section.

(f) The board shall issue an authorization to an individual practitioner who demonstrates that he or she:

(1) Signs attest and compilation reports as a certified public accountant or public accountant, as applicable; and

(2) Is undergoing a peer review program that conforms with applicable rules.

(g) The board shall renew an authorization for a one year period beginning on the first day of July of each year after
initial issuance in accordance with the requirements for initial issuance of an authorization in this section.

(h) The board shall charge an application fee for the initial issuance or renewal of an authorization in an amount specified by rule.

§30-9-20. Refuse to issue or renew; suspension, revocation of license; disciplinary action.

(a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license or practice privilege of any licensee, substantial equivalency practitioner or firm and may take disciplinary action against a licensee or substantial equivalency practitioner practicing in this state who, after hearing, has been adjudged by the board as unqualified because of any of the following reasons:

(1) Fraud or deceit in obtaining or maintaining a license or substantial equivalency practice privilege;

(2) Cancellation, revocation, suspension or refusal to renew an out-of-state certificate, an out-of-state permit or substantial equivalency practice privilege for disciplinary reasons in any other state for any cause other than a failure to pay an annual fee for the renewal of an out-of-state certificate or out-of-state permit in the other state;

(3) Failure by any licensee to maintain compliance with requirements for issuance or renewal of a license or to timely notify the board as required under section eighteen of this article;

(4) Revocation or suspension of the right of a licensee or substantial equivalency practitioner to practice before any state or federal agency;
(5) Dishonesty, fraud, professional negligence in the performance of services as a licensee or substantial equivalency practitioner or in the filing or failure to file the licensee’s or substantial equivalency practitioner’s own income tax returns, or a willful departure from accepted standards of professional conduct applicable to licensees and substantial equivalency practitioners;

(6) Violation of any provision of this article or any rule, including the violation of any professional standard or rule of professional conduct;

(7) Conviction of a felony or any crime an element of which is dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state if the underlying act or omission involved would have constituted a crime under the laws of this state;

(8) Performance of any fraudulent act by any licensee or substantial equivalency practitioner;

(9) Any conduct adversely reflecting upon the licensee’s or substantial equivalency practitioner’s fitness to perform professional services;

(10) Making any false or misleading statement or verification in support of an application for a license filed by another person or firm; or

(11) Engaging in the unlawful practice of law as defined by the West Virginia supreme court of appeals.

(b) If the board suspends, revokes, refuses to issue, refuses to renew or limits any license or practice privilege, the board shall give written notice of the denial, including a statement of charges setting forth the reasons for the denial, and notice of the date, time and place for hearing. The hearing must be held in
accordance with the provisions of section twenty-two of this article.

(c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fine not to exceed one thousand dollars per day per violation, and mandatory attendance at continuing professional education seminars.

§30-9-21. Complaints; investigation.

(a) Upon receipt of a written complaint filed against any licensee, substantial equivalency practitioner or firm, the board shall provide a copy of the complaint to the licensee, substantial equivalency practitioner or firm.

(b) The board may investigate the complaint. If the board finds upon investigation that probable cause exists that the licensee, substantial equivalency practitioner or firm has violated any provision of this article or the rules, the board shall serve the licensee, substantial equivalency practitioner or firm with a written statement of charges and a notice specifying the date, time and place of hearing. The hearing must be held in accordance with section twenty-two of this article.

(c) The board may review the publicly available professional work of a licensee, substantial equivalency practitioner, or firm on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety. If the board discovers reasonable grounds, the board may conduct an investigation and upon its own motion, may file a written statement of charges, including a notice specifying the date, time and place of hearing, against the licensee, firm or substantial equivalency practitioner.

§30-9-22. Hearing; judicial review; notification to out-of-state board of accountancy; costs of proceedings.
(a) A hearing on a statement of charges must be held in accordance with the provisions for hearing set forth in section eight, article one of this chapter and procedures specified by rule.

(b) Any licensee, substantial equivalency practitioner or firm adversely affected by any decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article five, chapter twenty-nine-a of this code.

(c) If the board renders a decision refusing to issue, refusing to renew, suspending or revoking a license, or the board takes disciplinary action, the board shall determine whether the licensee, substantial equivalency practitioner or firm holds an out-of-state certificate or permit, and if so, the board shall notify the board of accountancy of the state of issuance of its decision in the manner, under the circumstances and within the time specified by rule.

(d) In addition to other sanctions imposed, the board shall require a licensee, firm or substantial equivalency practitioner to pay the costs of the proceeding.

§30-9-23. Reinstatement.

If the board has suspended, revoked or refused to renew a license or has revoked the practice privileges of a substantial equivalency practitioner, the licensee, firm or substantial equivalency practitioner against whom action has been taken under the provisions of this article, must be afforded an opportunity to demonstrate the qualifications to resume practice. The application for reinstatement must be in writing and is subject to the procedures specified by rule.
§30-9-24. Licensees' working papers; clients' records.

(a) Any statement, record, schedule, working paper, and memorandum made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee incident to, or in the course of, rendering services to a client while a licensee, remains the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary: Provided, That this subsection does not apply to a report submitted by the licensee to the client or to a statement, record, schedule, working paper or memorandum provided by the client to the licensee or to a partner, shareholder, officer, director, member, manager or employee of a licensee.

(b) No statement, record, schedule, working paper, or memorandum made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee incident to, or in the course of, rendering services to a client while a licensee may be sold, transferred or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners, stockholders, members or new partners, new stockholders, or new members of the licensee, or any combined or merged firm or successor in interest to the licensee.

(c) Nothing in this section may be construed to prohibit any temporary transfer of a workpaper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information as authorized by rule.

(d) In addition to any statement, record, schedule, working paper, memorandum or report required to be furnished or returned to a client in accordance with subsection (a) of this section, a licensee shall furnish to a client or former client, upon
request made within a reasonable time after original issuance of
the document in question:

(1) A copy of the tax return of the client;

(2) A copy of any report or other document issued by the
licensee to or for the client and not formally withdrawn or
disavowed by the licensee prior to the request;

(3) A copy of any working paper, to the extent that it would
ordinarily constitute part of the client’s records and is not
otherwise available to the client; and

(4) Any accounting or other record belonging to, or
obtained from or on behalf of, a client that the licensee removed
from the client’s premises or received for the client’s account:
Provided, That a licensee may make and retain copies of the
documents of the client when they form the basis for work done
by the licensee.

(e) Nothing in this section requires a licensee to keep any
workpaper beyond the period prescribed in any other applicable
statute.

§30-9-25. Commissions, referral fees and contingent fees.

(a) To the extent specified by rule, a licensee may for a
contingent fee represent a client before a taxing authority within
the scope of practice of public accounting: Provided, That this
provision may not be construed either to limit or to expand the
scope of practice of public accounting, and may not be con-
strued to permit the unauthorized practice of law.

(b) All agreements or arrangements in which a licensee is
to be paid a commission, referral fee or contingent fee must be
in writing, state the method by which the fee is to be deter-
mined, must be signed by both the licensee and the client, and
must be delivered to the client before the performance of any services or the delivery of any product to which the commission, referral fee or contingent fee relates. A contingent fee arrangement must state the method of calculation of the fee, including the percentage or percentages which accrue to the licensee in the event of all foreseeable outcomes, the expenses to be deducted from any recovery, collection or other amount on which the fee may be based, and whether the expenses are to be deducted before or after the contingent fee is calculated.


(a) No authorization holder or substantial equivalency practitioner may perform attest or compilation services in a manner other than pursuant to the statements on standards relating to those services specified by rule.

(b) (1) No licensee or substantial equivalency practitioner may, for a commission or referral fee, recommend or refer to a client any product or service or refer any product or service to be supplied by a client, or perform for a contingent fee any professional services for or receive a referral fee, commission or contingent fee from a client for whom the licensee, the substantial equivalency practitioner or any firm with which either of them works or associates or any firm in which either of them owns an interest performs for that client:

(A) An audit or review of a financial statement;

(B) A compilation of a financial statement when the licensee or substantial equivalency practitioner expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence; or

(C) An examination of prospective financial information.
(2) The prohibition in subdivision one of this subsection applies only during the period in which the licensee or substantial equivalency practitioner is engaged to perform any of the services listed in subdivision (1) of this subsection and the period covered by any historical financial statements involved in any of those listed services.

(c) No licensee or substantial equivalency practitioner may for a contingent fee prepare an original or amended tax return or claim for a tax refund or serve as an expert witness.

(d) No licensee may use a professional or firm name or designation that: (1) Is deceptive or misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter; or (2) contains a name or term other than past or present partners, officers, members, managers or shareholders of the firm or of a predecessor firm engaged in the practice of accounting.

(e) No person or firm that does not hold an authorization to perform attest services may perform or offer to perform attest services, and no person or firm that does not hold an authorization to perform compilation services may perform or offer to perform compilation services.

(f) No individual practitioner who holds an authorization may perform or offer to perform attest services for a client of his or her employer through or on behalf of his or her employer.

(g) No person who is not a certified public accountant, a public accountant or a substantial equivalency practitioner may:

(1) Issue a report on financial statements of any other person, business entity, or governmental unit or otherwise render or offer to render any attest or compilation service: Provided, That this subdivision does not prohibit any act of a
may lead a reasonable person to believe that the person is a certified public accountant or the holder of an out-of-state certificate; or

(10) Assume or use the title “public accountant,” the abbreviation “PA,” or any other title, designation, word, combination of letters, abbreviation, sign, card or device that may lead a reasonable person to believe that the person is a public accountant.

(h) No business entity that does not hold a permit may assume or use the designations “certified public accountants,” “CPA firm,” “public accountants,” or “PA firm” or the abbreviations “CPAs,” or “PAs,” or any other title, designation, word, combination of letters, abbreviation, sign, card or device that may lead a reasonable person to believe that the business entity is a firm or holds a permit.

(i) The display or uttering by a person of any printed, engraved or written instrument, bearing the name of the person in conjunction with any of the claims, titles, words or phrases listed in this section is, for purposes of this section, prima facie evidence that the person has engaged in the acts.

§30-9-27. Injunctions against unlawful acts.

When, as a result of an investigation under this article or otherwise, the board or any other interested person believes that any person or business entity has engaged, is engaging, or is about to engage in any acts or practices that constitute or will constitute a violation of section twenty-six of this article, the board or any other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or practices, and upon a showing that the person or business entity has engaged or is about to engage in any act or
practice, an injunction, restraining order, or another appropriate order may be granted by the court without bond.

§30-9-28. Criminal proceedings; penalties.

(a) When, by reason of an investigation under section twenty-one of this article or otherwise, the board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of section twenty-six of this article, the board may bring its information to the attention of the attorney general or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought thereon.

(b) Any person or firm who knowingly violates any provision of section twenty-six of this article 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 not more than one year, or both fined and imprisoned.


In any action or proceeding brought under sections twenty-seven or twenty-eight of this article or any proceeding initiated under section twenty-one of this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

§30-9-30. Accounting corporations.

(a) All accounting corporations created prior to the first day of July, two thousand one, are hereby continued.

(b) On or after the first day of July, two thousand one, one or more certified public accountants or public accountants may
organize and become a shareholder or shareholders of an accounting corporation domiciled within this state under the terms and conditions and subject to the limitations and restrictions specified by rule.

(c) When the secretary of state receives a certification of authorization to act as an accounting corporation, he or she shall attach the authorization to the corporation application and, upon compliance with the applicable provisions of chapter thirty-one of this code, the secretary of state shall issue to the incorporators a certificate of incorporation for the accounting corporation.

§30-9-31. Inapplicability of article.

(a) Nothing contained in this article may be construed to prevent any person from describing himself or herself as an "accountant" or a "bookkeeper" or from stating that he or she practices accountancy or bookkeeping; nor, subject to certification and registration requirements herein imposed, may this article be construed to prevent any person from: (1) Performing services involving the use of accounting skills; (2) rendering tax services, management advisory or consulting services; (3) keeping of books of account and related accounting records; or (4) preparing, compiling or assembling financial statements without the expression of an assurance.

(b) The prohibitions of this section and the other provisions of this article may not be construed to preclude a person or business entity not holding a certificate or registration from using the following or substantially similar language: "I (We) have compiled the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management (owners). I (We) have not audited or reviewed the accompany-
ing financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position). If omitted disclosures were included in the financial statements, they might influence the user’s conclusions about the (entity’s) financial position, results of operations and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about these matters."

(c) Nothing contained in this article may be construed to prohibit an employee from furnishing services to his or her employer.

(d) Nothing in this article prohibits a practicing attorney or group of attorneys from preparing or presenting records or documents customarily prepared by an attorney or group of attorneys in connection with the attorney’s professional work in the practice of law.

§30-9-32. Termination date.

The board shall terminate on the first day of July, two thousand five, pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 234

(S. B. 720 — By Senators Wooton, Caldwell, Deem, Facemyer, Fanning, Hunter, Kessler, Minard, Mitchell, Ross and Rowe)

[Passed April 14, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section four, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the board of examiners of land surveyors to promulgate emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-4. Powers and duties of board; funds.

(a) The board shall have the power and duty to:

(1) Examine applicants and determine their eligibility for a license to engage in the practice of land surveying;

(2) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses to engage in the practice of land surveying in accordance with the provisions of this article;

(5) Investigate alleged violations of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary
action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;

(6) Keep accurate and complete records of its proceedings, certify the same as may be appropriate and prepare, from time to time, a list showing the names and addresses of all licensees;

(7) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article; and

(8) Establish standards to evaluate surveying curricula as it relates to the practice of land surveying under the provisions of this article and to determine the amount of experience required under section five of this article which may be substituted for a particular curriculum.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "board of examiners of land surveyors fund". All of the reasonable compensation of the members of the board, the reimbursement of all reasonable and necessary expenses actually incurred by such members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for this purpose.

(c) The Legislature finds that an emergency situation exists and, therefore, the board is hereby authorized to establish by emergency rule, pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, a rule to effectuate the purpose of this article, including, but not limited to, continuing education.
AN ACT to amend and reenact sections two, four, five, six, seven and eight of article twenty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen, all relating to the board of examiners of radiologic technologists; providing for annual license renewals; allowing the board to establish renewal fees; increasing the number of board members; revising the powers and duties of the board; allowing compensation of members; and continuing the board of examiners of radiologic technologists.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-2. Definitions.
§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.
§30-23-5. Board of examiners; powers and duties; funds of board.
§30-23-6. Qualifications of applicants; exceptions; applications; fee.
§30-23-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

2 (a) “Board” means the West Virginia radiologic technology board of examiners.

3 (b) “License” means a license granted and issued by the board for the practice of radiologic technology.

4 (c) “Licensed practitioner” means a person licensed to practice medicine, chiropractic, podiatry, osteopathy or dentistry.

5 (d) “Licensee” means any person holding a license or a temporary permit issued under the provisions of this article.

6 (e) “Radiologic technologist” means a person, other than a licensed practitioner who applies ionizing radiation or assists in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

7 (f) “Radiologic technology” means the application of ionizing radiation or assisting in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

8 (g) “Radiologist” means a licensed practitioner who specializes in the use of ionizing radiation for the diagnosis or treatment of disease.
(h) "Radiology resident" means a licensed practitioner who is in training to become a radiologist and who uses ionizing radiation in the diagnosis or treatment of disease, under the supervision of a radiologist.

(i) "Supervision" means responsibility for and control of quality, radiation safety and technical aspects in the application of ionizing radiation of human beings for diagnostic or therapeutic purposes.

(j) "Technology" hereinafter relates to radiologic technology.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

There is hereby created a West Virginia radiologic technology board of examiners, hereinafter called the board. The governor shall appoint the members of such board, by and with the advice and consent of the Senate. The board shall consist of nine members, composed of one member from the division of radiologic health of the West Virginia state department of health, two lay members, three licensed practitioners, two of whom shall be radiologists, and three radiologic technologists who are licensed hereunder.

Each member shall be appointed for a term of three years and shall serve until a successor has been appointed and has qualified. The terms shall be staggered in accordance with the initial appointments under prior enactments of this article. All members of the board shall be residents of West Virginia. A member may succeed himself. Vacancies shall be filled by appointment by the governor for the unexpired term. Before entering upon the performance of his duties, each member shall
take and subscribe to the oath required by section five, article four of the constitution of this state.

The board shall elect from its membership a chairman and secretary who shall serve at the will and pleasure of the board. A majority of the members of the board constitutes a quorum, and meetings shall be held at the call of the chairman or upon the written request of four members at such time and place as designated in such call or request, and, in any event, the board shall meet at least twice annually to conduct business as may come before it. The board shall hold its first meeting within thirty days after the appointment of the members. The members of the board shall receive the same compensation and expense reimbursement for their services as is paid to members of the Legislature for interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

§30-23-5. Board of examiners; powers and duties; funds of board.

(a) The board shall:

(1) Propose legislative rules implementing the provisions of this article and the powers and duties conferred upon the board in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(2) Determine applicants eligibility for a license or temporary permit to practice radiologic technology;

(3) Issue, renew, deny, suspend or revoke licenses and temporary permits to engage in the practice of radiologic technology in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter
provided, review, affirm, reverse, vacate or modify its order
with respect to any such denial, suspension or revocation;

(4) Investigate alleged violations of provisions of this
article, reasonable rules and regulations promulgated hereunder
and orders and final decisions of the board and take appropriate
disciplinary action against any licensee for the violation thereof
or institute appropriate legal action for the enforcement of the
provisions of this article, rules and regulations promulgated
hereunder and orders and final decisions of the board;

(5) Employ, direct, discharge and define the duties of full
or part-time professional, clerical or other personnel necessary
to effectuate the provisions of this article;

(6) Keep accurate and complete records of its proceedings,
certify the same as may be appropriate, and prepare, from time
to time, a list showing the names and addresses of all licensees;

(7) Provide standards for approved schools of technology,
procedures for obtaining and maintaining approval, and
procedures of revocation of approval where standards are not
maintained: Provided, That such standards for approved schools
meet at least the minimal requirements of the American society
of radiologic technologists;

(8) Whenever it deems it appropriate, confer with the
attorney general or his assistants in connection with all legal
matters and questions; and

(9) Take such other action as may be reasonably necessary
or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a
person designated by the board and deposited by him with the
treasurer of the state and credited to an account to be known as
the “board of examiners of radiologic technologist fund.” The
reimbursement of all reasonable and necessary expenses actually incurred by members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state’s general revenue fund shall be expended for this purpose.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to practice radiologic technology the applicant must:

(1) Be of good moral character;

(2) Have completed four years of high school education or its equivalent;

(3) Have successfully completed a minimum twenty-four-month course in radiologic study in a school of radiologic technology approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of radiologic technology, skills and techniques; and

(5) Not have been convicted of a felony in any court in this state or any federal court in this or any other state within ten years preceding the date of application for registration, which conviction remains unreversed; and not have been convicted of a felony in any court in this state or any federal court in this or any other state at any time if the offense for which the applicant was convicted related to the practice of radiologic technology, which conviction remains unreversed.

(b) Any person who holds a license or certificate, including the American registry of radiologic technologists, to practice radiologic technology issued by any other state, the require-
ments for which license or certificate are found by the board to be at least equal to those provided in this article, shall be eligible for a license to practice radiologic technology in this state without examination.

(c) The following persons are not required to obtain a license in accordance with the provisions of this article:

(1) A technology student enrolled in or attending an approved school of technology who as part of his or her course of study applies ionizing radiation to a human being under the supervision of a licensed practitioner;

(2) A person acting as a dental assistant who under the supervision of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography;

(3) A person engaged in performing the duties of a technologist in the person’s employment by an agency, bureau or division of the government of the United States;

(4) Any licensed practitioner, radiologist or radiology resident; and

(5) Any person who demonstrates to the board that as of the first day of July, one thousand nine hundred ninety-nine, he or she:

(A) Has engaged in the practice of radiologic technology for the limited purpose of performing bone densitometry in this state for five or more years;

(B) Practices under the supervision of a licensed practitioner; and

(C) Has received a densitometry technologist degree certified by the international society for clinical densitometry.
(d) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (d) of this section), in such manner, on such forms and containing such information as the board may from time to time by legislative rule prescribe, and pay to the board a license fee, which fee shall be returned to the applicant if the license application is denied.

§30-23-7. Issuance of license; renewal of license; renewal fee.

Whenever the board finds that an applicant meets all the requirements of this article for a license to engage in the practice of radiologic technology, it shall forthwith issue to him such license; and otherwise the board shall deny the same. The license is valid for a period of one year from the date issued and shall be renewed every year without examination upon application for renewal on a form prescribed by the board and payment to the board of a renewal fee established by legislative rule: Provided, That the board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-23-8. Temporary permits.

Upon proper application the board may issue a temporary permit to engage in the practice of radiologic technology in this state to an applicant who meets the qualifications of subdivisions (1), (2), (3) and (5), subsection (a), section six of this article, pending examination of such applicant. Temporary permits will expire as provided by legislative rule.

§30-23-14. Termination of Board.

The board of examiners of radiologic technologists shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of such article.
CHAPTER 236

(S. B. 419 — By Senators Bailey, Craigo, Fanning, Sharpe, Love, McCabe, Mitchell, Rowe, Hunter, Oliverio, Wooton, Sprouse, McKenzie and Redd)

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

AN ACT to amend and reenact sections two, three, seven, eight and fourteen, article thirty-five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two-a, all relating to the board of examiners for licensed dietitians; defining a scope of practice; terms of board members; compensation of board members; license fees, renewal fees and reinstatement fees may be established by rule; penalties; and removing limitation on reimbursement of expenses.

Be it enacted by the Legislature of the West Virginia:

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

ARTICLE 35. BOARD OF DIETITIANS.

§30-35-2a. Scope of practice.
§30-35-3. Board of licensed dietitians.
§30-35-7. Qualifications; licensure; examinations; waivers and fees.
§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.

As used in this article, the following terms have the meanings ascribed to them:

(a) "Board" means the West Virginia board of licensed dietitians;

(b) "Commission on dietetic registration" means the commission on dietetic registration that is a member of the national commission for health certifying agencies;

(c) "Fund" means the board of examiners for dietitians' administrative fund created pursuant to the provisions of section five of this article;

(d) "Licensed dietitian" means any person who has obtained a license to practice as a licensed dietitian from the West Virginia board of licensed dietitians;

(e) "Medical nutrition therapy" or "nutrition therapy" means nutritional diagnostic assessment and nutrition therapy services for the purpose of disease management; and

(f) "Registered dietitian" means a person registered by the commission on dietetic registration.

§30-35-2a. Scope of practice.

(a) The primary scope of practice of licensed dietitians is the provision of medical nutrition therapy. Licensed dietitians may also perform other nutrition-related services to promote the general health, well-being and the prevention of chronic diseases or conditions.

(b) Nothing in this article may be construed to prohibit or otherwise limit the practice of a profession by persons who are licensed, certified or registered under the laws of this state and
§30-35-3. Board of licensed dietitians.

(a) There is continued the West Virginia board of licensed dietitians. The board consists of five members who shall be appointed by the governor, by and with the advice and consent of the Senate. The governor shall make appointments from a list of not less than eight names submitted to the governor by the West Virginia dietetic association. Each member of the board shall be a citizen of the United States and a resident of this state. Four members shall have experience as a registered or licensed dietitian for a minimum of three years preceding the date of appointment. One member of the board shall be a lay person who is not a registered or licensed dietitian and not subject to the practice requirements of this subsection.

(b) The governor shall appoint members of the board for overlapping terms of four years: Provided, That each member shall serve no more than two consecutive four-year terms: Provided, however, That appointments to fill a vacancy may not be considered as one of two consecutive terms: Provided further, That terms in effect on the effective date of this section shall be considered as one of two consecutive terms.

(c) In the event a board member is unable to complete a term, the governor shall appoint a person with similar qualifications to complete the unexpired term. Each vacancy occurring on the board shall be filled by appointment within sixty days after the vacancy is created.

(d) Each member of the board may receive compensation for attendance at official meetings not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law and may be reimbursed for actual and
necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

(e) Annually, the members shall elect a chair, vice chair and secretary. The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair’s duties in the absence of the chair. All meetings shall be general meetings for the consideration of any matter which may properly come before the board. A majority of the board constitutes a quorum for the transaction of business. The board shall meet at least once a year and at such other times and places as it may determine; and shall meet on the call of the chair. It is the duty of the chair to call a meeting of the board on the written request of three members of the board. The board shall keep an accurate record of all proceedings and maintain the board records. The board may employ personnel necessary to accomplish the performance of its duties: Provided, That the board may not expend more than it has available to it solely through the fees established in this article or as established in accordance with section six, article one of this chapter.

§30-35-7. Qualifications; licensure; examinations; waivers and fees.

(a) An applicant for a license to engage in practice as a licensed dietitian shall submit to the board written evidence, verified by oath, that he or she:

(1) Complies with the code of ethics adopted by the board;

(2) Has completed a major course of study in human nutrition, dietetics, food systems management or the equivalent thereof and possesses a baccalaureate or post-baccalaureate degree; and
(3) Has completed a planned continuous professional experience component in dietetic practice of not less than nine hundred hours under the supervision of a registered or licensed dietitian.

(b) Each applicant is required to pass a written examination demonstrating competence in the discipline of dietetics and nutrition. Each written examination may be supplemented by an oral examination. The board shall determine the times and places for examinations.

(c) When an applicant successfully passes an examination or examinations, the board shall issue to the applicant a license to engage in practice as a licensed dietitian. In the event an applicant has failed to pass examinations on three occasions, the applicant shall, in addition to the other requirements of this section, present to the board other evidence of his or her qualifications that the board prescribes.

(d) Upon application and submission of the applicable fee, the board may waive the examination requirements of this section and issue a license to practice as a licensed dietitian to an applicant who is registered by the commission on dietetic registration or who has been duly licensed as a nutritionist or dietitian under the laws of another state if the standards for licensing in that state are no less stringent than those required under the provisions of this article.

(e) Any person applying for a dietitian license shall submit a fee of fifty dollars or a reasonable fee established by legislative rule pursuant to section six, article one of this chapter with the application to the board, which shall be deposited to the credit of the fund provided in section five of this article.

§30-35-8. Renewal of licenses; reinstatement; fees; penalties; inactive lists.
(a) The license of every person licensed under the provisions of this article shall be annually renewed except as otherwise provided by this section. At such times as the board, in its discretion, may determine, the board shall mail a renewal application to every person whose license was initially granted or renewed during the previous calendar year. All persons seeking renewal shall submit a completed application and a fifty dollar annual renewal fee or a reasonable renewal fee established by legislative rule pursuant to section six, article one of this chapter. Upon receipt of the application and fee, the board shall verify the accuracy of the application and, if it is accurate, issue to the applicant a certificate of renewal of the license for the current year. The certificate of renewal entitles its holder to practice dietetics for the period stated on the certificate of renewal.

(b) Any licensee who allows his or her license to lapse by failing to renew for a period not exceeding three years may be reinstated by the board upon receipt of a satisfactory explanation for the failure to renew his or her license and payment of the annual renewal fee plus a reinstatement fee of twenty-five dollars or a reasonable reinstatement fee established by legislative rule pursuant to section six, article one of this chapter.

(c) Any person allowing his or her license to lapse for a period exceeding three years is required, to be reinstated as a licensed dietitian, to pass a written examination established by the board and to pay to the board a licensing fee of fifty dollars or a reasonable licensing fee established by legislative rule pursuant to section six, article one of this chapter.

(d) Any person engaged in the practice of licensed dietetics during the time his or her license has lapsed is in violation of the provisions of this article and is subject to the penalties provided in section fourteen of this article.
(e) Any licensed dietitian who desires to retire from practice temporarily shall submit a written notice of the retirement to the board. Upon receipt of the notice the board shall place the name of that person upon the inactive list. Any person remaining on the inactive list may not engage in the practice of licensed dietetics in this state and is not subject to the payment of any renewal fees. Upon submission of an application for renewal of license and payment of the renewal fee for the current year, a licensed dietitian may resume active practice.


(a) It is a misdemeanor for any person, corporation or association to:

(1) Sell, fraudulently obtain, furnish or assist in selling, fraudulently obtaining or furnishing any dietitian license or license record;

(2) Engage in the practice as a licensed dietitian under cover of any diploma, license or record illegally or fraudulently obtained;

(3) Represent or imply to the public that he or she is authorized to use the title "dietitian" or "licensed dietitian" or any other title intended to convey that impression, unless duly licensed pursuant to the provisions of this article;

(4) Engage in the practice as a licensed dietitian during the time his or her license is suspended or revoked; or

(5) Otherwise violate any provisions of this article.

(b) Any person, corporation or association who violates the provisions of subsection (a) of this section or any rule promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.
CHAPTER 237

(Com. Sub. for H. B. 2567 — By Delegates Kuhn, Tucker, Hatfield, Perdue, Prunty, Angotti and Overington)

[Passed April 3, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter thirty of said code by adding thereto a new article, designated article thirty-eight, relating to the real estate appraiser licensing and certification act; requiring real estate appraisers to be licensed; requiring real estate appraisers to be certified in order to perform certain functions; definitions; classifications of appraisers and authority of classifications; classifications and certificate numbers required on documents; corporations; nonresident licensure and certification; consent to service of process; temporary registration; license by reciprocity; board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff; powers and duties of the board; board funds; rulemaking authority; civil liability for board members; liability limitations for reporting violations to board; applications for license and certification; renewals; suspending, revoking or refusing to issue or renew license or certification; grounds for disciplinary action; disciplinary proceedings; hearings; orders; entry of order without notice and hearing; when administrative law judge or hearing examiner may hold hearing; judicial review; appeals to supreme court of appeals; penalties, fines and imprisonment; requiring proof of license or certification to maintain action for fees; standards of
professional appraisal practice; attorney general opinions and duties; continuation of board.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty of said code be amended by adding thereto a new article, designated article thirty-eight, to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-1. Real estate appraiser license required; exceptions.
§30-38-2. Short title.
§30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.
§30-38-5. Licensure and certification of nonresidents; consent to service of process; temporary registration; license by reciprocity.
§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.
§30-38-7. General powers and duties.
§30-38-8. Board fund; disposition of funds.
§30-38-10. Civil liability for board members; liability limitations of professionals reporting to board.
§30-38-11. Applications for license or certification; renewals.
§30-38-12. Refusal to issue or renew license or certification; suspension or revocation; grounds for disciplinary action.
§30-38-14. Hearings; orders; entry of order without notice and hearing; judicial review; appeals to supreme court of appeals.
§30-38-17. Standards of professional appraisal practice.
§30-38-19. Continuation of board.
§30-38-1. Real estate appraiser license required; exceptions.

(a) It is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first being licensed or certified as provided in this article. This section shall not be construed to apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this article may be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed.

(b) No person other than a person licensed or certified under this article may use the title of licensed appraiser or certified appraiser or any title, designation or abbreviation likely to create the impression that the person is licensed or certified by the state.

(c) This article does not apply to:

(1) A real estate broker or salesperson licensed by this state who, in the ordinary course of his or her business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, when this opinion as to the listing price or the purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged;

(2) A casual or drive-by inspection of real estate in connection with a consumer loan secured by the real estate, when the inspection is not referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged for the inspection;
(3) An employee who renders an opinion as to the value of real estate for his or her full-time employer, for the employer's internal use only and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

(4) Appraisals of personal property, including, but not limited to, jewelry, household furnishings, vehicles and manufactured homes not attached to real estate;

(5) Any officer or employee of the United States, or of the state of West Virginia or a political subdivision thereof, when the employee or officer is performing his or her official duties: Provided, That such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate or real property: Provided, however, That this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; or

(6) Any evaluation of the value of real estate serving as collateral for a loan made by a financial institution insured by the federal deposit insurance corporation: Provided, That: (A) the amount of the loan is equal to or less than two hundred fifty thousand dollars; (B) the evaluation is used solely by the lender in its records to document the collateral value; (C) the evaluation clearly indicates on its face that it is for the lender’s internal use only; (D) the evaluation is not labeled an appraisal; and (E) the evaluation is on a form approved by the board. Individuals performing these evaluations may be compensated for their services. The lender shall notify its customer if it intends to use an unlicensed evaluator and give the customer the opportunity to elect an evaluation, by a certified or licensed appraiser, the cost of which will be paid as agreed between the lender and the customer.
§30-38-2. Short title.

This article is known and may be cited as the “Real Estate Appraiser Licensing and Certification Act.”


As used in this article, the following terms have the following meanings:

(a) “Appraisal” means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment or a review assignment.

(b) “Analysis assignment” means an analysis, opinion or conclusion prepared by a real estate appraiser that relates to the nature, quality or utility of identified real estate or identified real property.

(c) “Appraisal foundation” means the appraisal foundation established on the thirtieth day of November, one thousand nine hundred eighty-seven, as a not-for-profit corporation under the laws of Illinois.

(d) “Appraisal report” means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a “valuation report”, “analysis report” or “review report”. For the purposes of this article, the testimony of an appraiser dealing with the appraiser’s analyses, conclusions or opinions concerning identified real estate or identified real property is considered an oral appraisal report.

(e) “Board” means the real estate appraiser licensing and certification board established by the provisions of this article.
(f) "Certified appraisal report" means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a state certified general real estate appraiser or a state certified residential real estate appraiser, represents to the public that the report meets the appraisal standards established by this article.

(g) "Certified real estate appraiser" means a person who holds a current, valid certification as a state certified residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

(h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on all three approaches to value, being the cost approach, the income approach and the sales comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) For residential property, relies to any significant degree on at least two of the three approaches to value, with one approach being the sales comparison approach, or does not have the characteristics of a noncomplex appraisal.

(i) "Cost approach" means an approach to valuing real estate which requires an appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze comparable cost data as are available to estimate the cost new of the improvements if any; and (3) analyze comparable data as are available to estimate the difference between cost new and the present worth of the improvements, also called accrued depreciation.

(j) "Income approach" means an approach to valuing real estate which requires an appraiser to: (1) Analyze comparable
rental data as are available to estimate the market rental of the property; (2) analyze comparable operating expense data as are available to estimate the operating expenses of the property; (3) analyze comparable data as are available to estimate rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on reasonably clear and appropriate evidence.

(k) "Licensed real estate appraiser" means a person who holds a current, valid license as a state licensed residential real estate appraiser issued to him or her under the provisions of this article.

(l) "Noncomplex appraisal" means an appraisal for which:
(1) There is an active market of essentially identical properties;
(2) adequate data is available to the appraiser; (3) adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and (4) for residential properties, the contract sales price falls within the market norm or median sales price for homes or lots within the same area.

(m) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(n) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(o) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

(p) "Real property interests" means one or more defined interests, benefits or rights inherent in the ownership of real estate.
(q) "Review assignment" means an analysis, opinion or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(r) "Sales comparison approach" means an approach to valuing real estate which requires an appraiser to analyze such comparable sales data as are available to indicate a value conclusion.

(s) "Valuation appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

§30-38-4. Classifications of licensure and certification; authority of appraisers; classification and license or certificate number required on all documents; corporations.

(a) The three classifications of real estate appraisers are state licensed residential real estate appraiser, state certified residential real estate appraiser and state certified general real estate appraiser.

(b) A state licensed residential real estate appraiser is authorized to conduct appraisals of: (1) Complex residential real estate of one to four units having a value of less than two hundred fifty thousand dollars; (2) noncomplex residential real estate of one to four units having a value of less than one million dollars; and (3) nonresidential real estate having a value of less than one hundred thousand dollars.

(c) A state certified residential real estate appraiser is authorized to conduct appraisals of residential real estate of one to four units without regard to value or complexity, and nonresidential real estate when the value is less than one hundred thousand dollars.
(d) A state certified general real estate appraiser is authorized to conduct appraisals of all types of real estate.

(e) The board is authorized to establish by legislative rule other classifications of appraiser licensing not prohibited by applicable federal law.

(f) An appraiser shall indicate his or her classification and license or certificate number, on all appraisals, statements of qualification, contracts and other instruments, including advertising media.

(g) A license or certificate may not be issued under the provisions of this article to a corporation, partnership, firm or group.

(h) Nothing contained in this article prohibits any person licensed or certified under this article from engaging in the practice of real estate appraising as a professional corporation in accordance with the provisions of the professional service corporation act of this state.

§30-38-5. Licensure and certification of nonresidents; consent to service of process; temporary registration; license by reciprocity.

(a) A nonresident of this state who has complied with the provisions of subsection (b) of this section may obtain a license or certification as a real estate appraiser in this state by complying with all of the provisions of this article relating to the licensing or certification of real estate appraisers.

(b) Each nonresident applicant for licensure or certification and each nonresident registrant for temporary practice within this state shall submit, with his or her application, an irrevocable consent that service of process upon him or her may be made by delivery of the process to the secretary of state if, in an
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11 action against the applicant in a court of this state arising out of
12 the applicant’s activities as a real estate appraiser in this state,
13 the plaintiff cannot, in the exercise of due diligence, effect
14 personal service upon the applicant.

15 (c) A nonresident of this state who is not licensed by this
16 state but who is licensed in another state, district or territory,
17 may perform one specific assignment relating to the appraisal
18 of real estate or real property in this state, after being approved
19 by the board in accordance with the rule for temporary registra-
20 tion and complying with the provisions of subsection (b) of this
21 section.

22 (d) If the board determines that another state or territory or
23 the District of Columbia has substantially equivalent licensure
24 or certification laws for real estate appraisers, an applicant for
25 licensure or certification in this state who is licensed or certified
26 under the laws of the other state, territory or district may obtain
27 a license or certificate as a real estate appraiser in this state
28 upon the terms and conditions set by the board: Provided, That
29 the laws of such state, territory or district accord substantially
30 equal reciprocal rights to a licensed or certified real estate
31 appraiser in good standing in this state, and that disciplinary
32 proceedings are not pending against the applicant in his or her
33 state of licensure or certification.

§30-38-6. Board created; appointments, qualifications, terms,
oath, removal of members; quorum; meetings;
disqualification from participation; compensation;
records; employing staff.

1 (a) The West Virginia real estate appraiser licensing and
2 certification board, which consists of nine members appointed
3 by the governor with the advice and consent of the Senate, is
4 continued. Each member shall be a resident of the state of West
5 Virginia. Four members shall be certified real estate appraisers
6 having at least five years’ experience in appraisal as a principal
line of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms. Two members shall have at least five years' experience in real estate lending as employees of financial institutions. Three members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales or have any financial interest in these practices. No member of the board may concurrently be a member of the West Virginia real estate commission. Not more than two appraiser members may be appointed from each congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act. No member may serve for more than three consecutive terms. Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article four of the constitution of this state. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect a chairman. A majority of the members of the board constitutes a quorum.

(d) The board shall meet at least once in each calendar quarter on a date fixed by the board. The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he or she is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself or herself from participation in
(e) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of section eleven, article one of this chapter.

(f) The board may employ staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser or lender, or by any partnership, corporation, association or group engaged in any real estate business, may not be employed by the board.

§30-38-7. General powers and duties.

The board shall:

(a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

(b) Establish examination specifications as prescribed herein and provide for appropriate examinations;

(c) Approve or disapprove applications for certification and licensure;

(d) Define by rule continuing education requirements for the renewal of certifications and licenses;

(e) Censure, suspend or revoke licenses and certification as provided in this article;

(f) Hold meetings, hearings and examinations;

(g) Establish procedures for submitting, approving and disapproving applications;
(h) Maintain an accurate registry of the names and addresses of all persons certified or issued a license to practice under this article;

(i) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(j) Issue to each licensed or certified real estate appraiser a pocket card with the appraiser’s name and license or certification number. Pocket cards are the property of the state of West Virginia and, upon suspension or revocation of the license to practice pursuant to this article, will be returned immediately to the board;

(k) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the state treasurer. The board shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account may not exceed the moneys credited to it;

(l) Keep records and make reports as required by article one of this chapter; and

(m) Perform any other functions and duties necessary to carry out the provisions of this article.

§30-38-8. Board fund; disposition of funds.

(a) The West Virginia appraiser licensing and certification board fund established in the office of the state treasurer is continued.

(b) The disposition of all funds received by the board shall be governed by the provisions of section ten, article one of this chapter.

a) The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to provide for:

(1) Licensure and certification requirements, including requirements for applications, examinations, reciprocity, temporary permits, apprentice permits and reinstatement;

(2) Fees for licenses, renewals of licenses and other services provided by the board;

(3) Experience, education and continuing education requirements and approval of courses; and

(4) Any other purpose to carry out the requirements of this article.

(b) The rule governing appraiser qualifications must include requirements which meet or exceed the education, experience and examination requirements issued or endorsed by the appraisal qualifications board of the appraisal foundation.

(c) Any rules in effect as of the passage of this article will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this act are interpreted to mean provisions of this article.

§30-38-10. Civil liability for board members; liability limitations of professionals reporting to board.

(a) Members of the board will be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as board members.

(b) Any person licensed or certified by this board who reports or otherwise provides evidence of violations of this article or the board's rules by another person engaging in real estate appraisal activity to the board, is not liable for making
the report if it is made without malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30-38-11. Applications for license or certification; renewals.

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, in a form as the board may prescribe. In addition to any other information required, the applicant’s social security number will be recorded on the application.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than one hundred twenty days nor later than thirty days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has com-
completed the continuing education requirements for renewal specified in this article and the board’s rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant’s license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee, within two years of the date that his or her certification expired.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

§30-38-12. Refusal to issue or renew license or certification; suspension or revocation; grounds for disciplinary action.

(a) The following acts or omissions are grounds for disciplinary action, and the board may refuse to issue or renew a license or certification, or after issuance may suspend or
revoke a license or certification or impose disciplinary sanc-
tions for:

(1) Procuring or attempting to procure license or certifica-
tion under this article by knowingly making a false statement,
submitting false information or making a material misrepre-
sentation in an application filed with the board, or procuring or
attempting to procure a license or certification through fraud or
misrepresentation;

(2) Paying money other than the fees provided for by this
article to any member or employee of the board to procure a
license or certification under this article;

(3) An act or omission in the practice of real estate apprais-
ing which constitutes dishonesty, fraud or misrepresentation
with the intent to substantially benefit the licensee or another
person or with the intent to substantially injure another person;

(4) Entry of a final civil or criminal judgment against a
licensee on grounds of fraud, misrepresentation or deceit in the
making of an appraisal of real estate;

(5) Conviction, including a conviction based upon a plea of
guilty or nolo contendre, of a crime which is substantially
related to the qualifications, functions or duties of a person
developing real estate appraisals and communicating real estate
appraisals to others;

(6) Making a false or misleading statement in that portion
of a written appraisal report that deals with professional
qualifications or in any testimony concerning professional
qualifications;

(7) Violation of any section of this article, or any rule of the
board;
(8) Violation of the confidential nature of governmental records to which a licensee gained access through employment or engagement as an appraiser by a governmental agency;

(9) Acceptance of a fee that is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion, or is or was contingent upon the analysis, opinion, conclusion or valuation reached, or upon the consequences resulting from the appraisal assignment;

(10) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this article; or

(11) Failing or refusing without good cause to exercise reasonable diligence, or negligence or incompetence, in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

(b) Every person licensed or certified by the board has a duty to report to the board in a timely manner any known or observed violation of this article or the board's rules by any other person licensed or certified by the board.


(a) The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of this article or the rules of the board.

(b) The board may revoke, suspend or refuse to renew the license or certificate or otherwise discipline an appraiser, or deny an application, for any of the acts or omissions set forth in this article or in the rules of the board.

(c) If an investigation indicates that an appraiser licensed or certified by the board has violated a law or rule, the board shall
serve a formal complaint upon the appraiser. The accused party is required to file an answer within twenty days of the date of service.

(d) In responding to a complaint, the accused party may admit the allegations of the complaint, deny the allegations of the complaint or otherwise plead. Failure to make a timely response shall be considered an admission of the allegations of the complaint.

(e) The board may make informal disposition of the matter, including entering into a consent agreement, or taking one or more of the disciplinary actions set forth in the board’s rules.

(f) In a disciplinary proceeding based upon a civil judgment, the licensee shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

§30-38-14. Hearings; orders; entry of order without notice and hearing; judicial review; appeals to supreme court of appeals.

(a) Subject to the provisions of subsection (c) of this section, the board shall provide notice and hearing to the accused party in advance of the entry of any order. The hearing and the administrative procedures are governed by the provisions of article five, chapter twenty-nine-a of this code and the board’s rules, and will be held at a time and place set by the board, but may not be held less than thirty or more than ninety days after the notice is given. A hearing may be continued by the board on its own motion or for good cause shown. At any hearing a party may represent himself or herself, or be represented by an attorney admitted to practice before any circuit court of this state.
(b) The board has the power and authority to issue subpoe-
nas and subpoenas duces tecum, administer oaths and examine
any person under oath in connection with any subject relating
to duties imposed upon or powers vested in the board.

(c) If the board finds that extraordinary circumstances exist
which require immediate action, it may without notice or
hearing enter an order taking any action permitted by this
article. Immediately upon the entry of the order, certified copies
shall be served upon all persons affected, who upon demand are
entitled to a hearing at the earliest practicable time.

(d) If, at the conclusion of the hearing, the board determines
that an appraiser has violated any of the provisions of this
article or the board's rules, it shall prepare a formal decision
containing findings of fact, conclusions of law, and disciplinary
actions to be taken.

(e) The board may elect to have an administrative law judge
or hearing examiner conduct the hearing. If the board makes
this election, the administrative law judge or hearing examiner
shall present a decision containing recommended findings of
fact, conclusions of law, and appropriate disciplinary actions to
be taken. The board may accept, reject or modify the decision
of the administrative law judge or hearing examiner.

(f) Any party adversely affected by a final order or decision
made by the board after a hearing is entitled to judicial review
as provided in article five, chapter twenty-nine-a of this code.

(g) Any party adversely affected by a final judgment of a
circuit court following judicial review may seek review by
appeal to the supreme court of appeals in the manner provided
in article six, chapter twenty-nine-a of this code.

(a) Any person engaging in real estate appraisal activity in this state who is not licensed under this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than five hundred dollars nor more than one thousand dollars and shall be ineligible to obtain a license for a period of one year from the date of his or her conviction of such offense: Provided, That the board, at its discretion, may grant a license within a period of one year upon a finding of extenuating circumstances, and after an administrative hearing.

(b) Any person acting or purporting to act as a certified real estate appraiser who is not certified under this article is guilty of a misdemeanor and, upon conviction, shall be fined not more than two thousand five hundred dollars or imprisoned in the county or regional jail for not more than one year, or both.

(c) If any person receives any money or the equivalent as a fee, commission, compensation or profit by or in consequence of a violation of any provision of this article, he or she shall, in addition to the penalties prescribed above, be subject to a penalty of not less than the sum of money so received nor more than three times the sum as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by any person aggrieved as a result of any such violation.


No person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real estate appraisal services for which a license is required by this article without alleging and proving that he or she was the holder of a valid real estate appraiser license in this state at all times during the performance of such services.
§30-38-17. Standards of professional appraisal practice.

Each real estate appraiser licensed or certified under this act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation. The board may, after a public hearing or public comment period held in accordance with provisions of article three, chapter twenty-nine-a of this code, adopt revised versions or make modifications of or additions to the uniform standards of professional appraisal practice.


At the request of the board, the state attorney general shall render to the board an opinion with respect to all questions of law arising in connection with the administration of this article and shall act as attorney for the board in all actions and proceedings brought by or against the board under, or pursuant to, any of the provisions of this article. All fees and expenses of the attorney general arising out of such duties shall be paid out of the special fund created under this article to pay the expenses of the administration of this article.

§30-38-19. Continuation of board.

The real estate appraiser licensing and certification board shall continue to exist until the first day of July, two thousand four, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provision of that article.
AN ACT to amend chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding thereto
a new article, designated article thirty-nine, relating to establish­
ing the uniform athlete agents act; prohibited conduct; and
penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 39. UNIFORM ATHLETE AGENTS ACT.

§30-39-4. Athlete agents: registration required; void contracts.
§30-39-5. Registration as athlete agent; form; requirements.
§30-39-6. Certificate of registration; issuance or denial; renewal.
§30-39-7. Suspension, revocation, or refusal to renew registration.
§30-39-8. Temporary registration.
§30-39-12. Student-athlete’s right to cancel.


This article may be cited as the Uniform Athlete Agents Act.


In this article:

(1) “Agency contract” means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) “Athlete agent” means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.
(4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "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.

(8) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "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.

(10) "Registration" means registration as an athlete agent pursuant to this article.

(11) "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.
(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.


(a) By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual’s agent for service of process in any civil action in this state related to the individual’s acting as an athlete agent in this state.

(b) The secretary of state may issue subpoenas for any material that is relevant to the administration of this article.

§30-39-4. Athlete agents: registration required; void contracts.

(a) Except as otherwise provided in subsection (b) of this section, an individual may not act as an athlete agent in this state without holding a certificate of registration under section six or eight of this article.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) Within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.
14  (c) An agency contract resulting from conduct in violation
15  of this section is void and the athlete agent shall return any
16  consideration received under the contract.

§30-39-5. Registration as athlete agent; form; requirements.

1  (a) An applicant for registration shall submit an application
2  for registration to the secretary of state in a form prescribed by
3  the secretary of state. An application filed under this section is
4  a public record. The application must be in the name of an
5  individual and, except as otherwise provided in subsection (b)
6  of this section, signed or otherwise authenticated by the
7  applicant under penalty of perjury and state or contain:
8
9  (1) The name of the applicant and the address of the
10  applicant’s principal place of business;
11
12  (2) The name of the applicant’s business or employer, if
13  applicable;
14
15  (3) Any business or occupation engaged in by the applicant
16  for the five years next preceding the date of submission of the
17  application;
18
19  (4) A description of the applicant’s:
20
21  (A) Formal training as an athlete agent;
22
23  (B) Practical experience as an athlete agent; and
24
25  (C) Educational background relating to the applicant’s
26  activities as an athlete agent;
27
28  (5) The names and addresses of three individuals not related
29  to the applicant who are willing to serve as references;
30
31  (6) The name, sport and last known team for each individu-
32  al for whom the applicant acted as an athlete agent during the
five years next preceding the date of submission of the applica-
tion;

(7) The names and addresses of all persons who are:

(A) With respect to the athlete agent's business if it is not
a corporation, the partners, members, officers, managers,
associates or profit-sharers of the business; and

(B) With respect to a corporation employing the athlete
agent, the officers, directors and any shareholder of the
 corporation having an interest of five percent or greater;

(8) Whether the applicant or any person named pursuant to
subdivision (7) of this subsection has been convicted of a crime
that, if committed in this state, would be a crime involving
moral turpitude or a felony, and identify the crime;

(9) Whether there has been any administrative or judicial
determination that the applicant or any person named pursuant
to subdivision (7) of this subsection has made a false, mislead-
ing, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or
any person named pursuant to subdivision (7) of this subsection
resulted in the imposition of a sanction, suspension, or declara-
tion of ineligibility to participate in an interscholastic or
intercollegiate athletic event on a student-athlete or educational
institution;

(11) Any sanction, suspension, or disciplinary action taken
against the applicant or any person named pursuant to subdivi-
sion (7) of this subsection arising out of occupational or
professional conduct; and

(12) Whether there has been any denial of an application
for, suspension or revocation of, or refusal to renew, the
registration or licensure of the applicant or any person named
pursuant to subdivision (7) of this subsection as an athlete agent in any state.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The secretary of state shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) Was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(2) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

§30-39-6. Certificate of registration; issuance or denial; renewal.

(a) Except as otherwise provided in subsection (b) of this section, the secretary of state shall issue a certificate of registration to an individual who complies with subsection (a), section five of this article or whose application has been accepted under subsection (b), section five of this article.

(b) The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant’s fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
(1) Been convicted of a crime that, if committed in this
state, would be a crime involving moral turpitude or a felony;

(2) Made a materially false, misleading, deceptive, or
fraudulent representation in the application or as an athlete
agent;

(3) Engaged in conduct that would disqualify the applicant
from serving in a fiduciary capacity;

(4) Engaged in conduct prohibited by section fourteen of
this article;

(5) Had a registration or licensure as an athlete agent
suspended, revoked, or denied or been refused renewal of
registration or licensure as an athlete agent in any state;

(6) Engaged in conduct the consequence of which was that
a sanction, suspension, or declaration of ineligibility to partici-
pate in an interscholastic or intercollegiate athletic event was
imposed on a student-athlete or educational institution; or

(7) Engaged in conduct that significantly adversely reflects
on the applicant's credibility, honesty or integrity.

(c) In making a determination under subsection (b) of this
section, the secretary of state shall consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it
occurred; and

(3) Any other relevant conduct of the applicant.

(d) An athlete agent may apply to renew a registration by
submitting an application for renewal in a form prescribed by
the secretary of state. An application filed under this section is
a public record. The application for renewal must be signed by
the applicant under penalty of perjury and must contain current
information on all matters required in an original registration.

(e) An individual who has submitted an application for
renewal of registration or licensure in another state, in lieu of
submitting an application for renewal in the form prescribed
pursuant to subsection (d) of this section, may file a copy of the
application for renewal and a valid certificate of registration or
licensure from the other state. The secretary of state shall accept
the application for renewal from the other state as an applica-
tion for renewal in this state if the application to the other state:

(1) Was submitted in the other state within six months next
preceding the filing in this state and the applicant certifies the
information contained in the application for renewal is current;

(2) Contains information substantially similar to or more
comprehensive than that required in an application for renewal
submitted in this state; and

(3) Was signed by the applicant under penalty of perjury.

(f) A certificate of registration or a renewal of a registration
is valid for two years.

§30-39-7. Suspension, revocation, or refusal to renew registration.

(a) The secretary of state may suspend, revoke or refuse to
renew a registration for conduct that would have justified denial
of registration under subsection (b), section six of this article.

(b) The secretary of state may deny, suspend, revoke or
refuse to renew a certificate of registration or licensure only
after proper notice and an opportunity for a hearing. The
provisions of article five, chapter twenty-nine-a of this code
apply to this article.
§30-39-8. Temporary registration.

The secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.


An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(1) Fifty dollars for an initial application for registration;

(2) Fifty dollars for an application for registration based upon a certificate of registration or licensure issued by another state;

(3) Ten dollars for an application for renewal of registration; or

(4) Ten dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.


(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;
(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(3) A description of any expenses that the student-athlete agrees to reimburse;

(4) A description of the services to be provided to the student-athlete;

(5) The duration of the contract; and

(6) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE**

**IF YOU SIGN THIS CONTRACT:**

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration
received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.


(a) Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

§30-39-12. Student-athlete’s right to cancel.

(a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the
9 athlete agent to induce the student-athlete to enter into the contract.


(a) An athlete agent shall retain the following records for a period of five years:

(1) The name and address of each individual represented by the athlete agent;

(2) Any agency contract entered into by the athlete agent; and

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) of this article to be retained are open to inspection by the secretary of state during normal business hours.


(a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:
(1) Initiate contact with a student-athlete unless registered under this article;

(2) Refuse or fail to retain or permit inspection of the records required to be retained by section thirteen of this article;

(3) Fail to register when required by section four of this article;

(4) Provide materially false or misleading information in an application for registration or renewal of registration;

(5) Predate or postdate an agency contract; or

(6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.


An athlete agent who violates subsection (a), section fourteen of this article is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not less than one nor more than three years, or both so fined and confined.

An athlete agent who violates subsection (b), section fourteen of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in a county or regional jail for not more than one year, or both so fined and confined.


(a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused
by a violation of this article. In an action under this section, the
court may award to the prevailing party costs and reasonable
attorney’s fees.

(b) Damages of an educational institution under subsection
(a) of this section include losses and expenses incurred because,
as a result of the conduct of an athlete agent or former student-
athlete, the educational institution was injured by a violation of
this article or was penalized, disqualified or suspended from
participation in athletics by a national association for the
promotion and regulation of athletics, by an athletic conference,
or by reasonable self-imposed disciplinary action taken to
mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until
the educational institution discovers or by the exercise of
reasonable diligence would have discovered the violation by the
athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-
athlete under this section is several and not joint.

(e) This article does not restrict rights, remedies, or
defenses of any person under law or equity.


The secretary of state may assess a civil penalty against an
athlete agent not to exceed twenty-five thousand dollars for a
violation of this article.


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.

The provisions of this article governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.


If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.


This article takes effect on the first day of July, two thousand one.

CHAPTER 239

(H. B. 2958 — By Delegates Amores, Staton, Webster, R. Thompson, Wills and Faircloth)

[Passed April 13, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section nine, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article four, chapter seven of said code; and to amend article seven of said chapter by adding thereto a new section, designated section four-a, all relating to prosecuting attorneys; providing for certain authorization and use of special prosecuting attorneys; and authorizing the option of full-time status for certain part-time prosecuting attorneys.

Be it enacted by the Legislature of West Virginia:

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

Chapter
6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure.

7. County Commissions and Officers.

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.


1 (a) If the ethics commission finds as the result of an investigation of a complaint that a pattern of ethics violations
or criminal violations under this chapter or under article five-a, chapter sixty-one of this code, exists in a state, county or covered municipal government, county school board or one of their respective departments, agencies, boards or commissions, and also finds that the prosecuting attorney of the county in which the violation occurred is, for some reason, unable or unwilling to take appropriate action, the chairman of the ethics commission may, upon a two-thirds vote of the members of the ethics commission, petition the appropriate circuit court for the appointment of a special prosecutor for the purpose of conducting an investigation to determine whether a violation of the criminal law of this state has occurred.

(b) A special prosecutor shall have the same authority as a county prosecutor to investigate and prosecute persons subject to this article for criminal violations committed in connection with their public office or employment which constitute felonies. No person who is serving as a prosecuting attorney or assistant prosecuting attorney of any county is required to take an additional oath when appointed to serve as a special prosecuting attorney.

(c) The ethics committee shall be authorized to employ and assign the necessary professional and clerical staff to assist any such special prosecutor in the performance of his or her duties and to pay and to set the compensation to be paid to a special prosecutor in an amount not to exceed seventy-five dollars per hour up to a maximum of fifty thousand dollars per annum.

(d) The special prosecutor shall be empowered to make a presentment to any regularly or specially impaneled grand jury in the appointing circuit court. The special prosecutor shall be empowered to prosecute any person indicted by such grand jury.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.
Article
4. Prosecuting Attorney, Rewards and Legal Advice.
7. Compensation of Elected County Officials.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

*§7-4-6. West Virginia prosecuting attorneys institute.

(a) There is hereby created the West Virginia prosecuting attorneys institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the institute’s business.

(b) There is hereby created the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county commissioner’s association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is hereby created the position of executive director of the West Virginia prosecuting attorneys institute to be employed by the executive council of the institute. The executive director of the West Virginia prosecuting attorneys institute shall serve at the will and pleasure of the executive council of the institute at an annual salary of fifty thousand dollars per year: Beginning the first day of July, one thousand nine hundred ninety-nine, the executive director shall receive an

*Clerk’s Note: This section was also amended by H. B. 2912 (Chapter 262), which passed subsequent to this act.
annual salary of fifty-five thousand dollars. The executive
director shall be licensed to practice law in the state of West
Virginia and shall devote full time to his or her official duties
and may not engage in the private practice of law.

(d) The duties and responsibilities of the institute, as
implemented by and through its executive council and its
executive director, shall include the following:

(1) To provide for special prosecuting attorneys to pursue
a criminal matter in any county upon the request of a circuit
court judge of that county and upon the approval of the
executive council;

(2) To establish and to implement general and specialized
training programs for prosecuting attorneys and their profes-
sonal staffs;

(3) To provide materials for prosecuting attorneys and their
professional staffs, including legal research, technical assis-
tance and technical and professional publications;

(4) To compile and disseminate information on behalf of
prosecuting attorneys and their professional staffs on current
developments and changes in the law and the administration of
criminal justice;

(5) To establish and to implement uniform reporting
procedures for prosecuting attorneys and their professional
staffs in order to maintain and to provide accurate and timely
data and information relative to criminal prosecutorial matters;

(6) To accept and expend funds, grants and gifts and accept
services from any public or private source;

(7) To enter into agreements and contracts with public or
private agencies or educational institutions;
(8) To identify experts and other resources for use by prosecutors in criminal matters;

(9) To make recommendations to the Legislature or the supreme court of appeals of the state of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

(10) To develop a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information as the institute deems appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the prosecution of the criminal action. No person who is serving as
a prosecuting attorney or assistant prosecuting attorney of any county is required to take an additional oath when appointed to serve as a special prosecuting attorney.

(f) The executive director of the institute shall maintain an appointment list that shall include the names of all fifty-five prosecuting attorneys and that shall also include the names of any assistant prosecuting attorney who wishes to serve as a special prosecuting attorney upon the same terms and conditions as set forth in this section. The executive director of the institute, with the approval of the executive council, shall appoint special prosecuting attorneys from the appointment list for any particular matter giving due consideration to the proximity of the proposed special prosecuting attorney’s home county to the county requesting a special prosecutor and giving due consideration to the expertise of the special prosecuting attorney.

(g) Commencing on the first day of July, one thousand nine hundred ninety-six, each county commission shall pay, on a monthly basis, a special prosecution premium to the treasurer of the state for the funding of the West Virginia prosecuting attorneys institute. The monthly premiums shall be paid according to the following schedule:

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<thead>
<tr>
<th>Category</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>$1,500,000,000</td>
<td>Unlimited</td>
<td>$400</td>
</tr>
<tr>
<td>B</td>
<td>$1,000,000,000</td>
<td>$1,499,999,000</td>
<td>$375</td>
</tr>
<tr>
<td>C</td>
<td>$800,000,000</td>
<td>$999,999,000</td>
<td>$350</td>
</tr>
<tr>
<td>D</td>
<td>$700,000,000</td>
<td>$799,999,000</td>
<td>$325</td>
</tr>
<tr>
<td>E</td>
<td>$600,000,000</td>
<td>$699,999,000</td>
<td>$300</td>
</tr>
<tr>
<td>F</td>
<td>$500,000,000</td>
<td>$599,999,000</td>
<td>$250</td>
</tr>
</tbody>
</table>
120  G  $ 400,000,000  $ 499,999,000  $200
121  H  $ 300,000,000  $ 399,999,000  $150
122  I  $ 200,000,000  $ 299,999,000  $100
123  J  -0-  $ 199,999,000  $ 50

Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the treasurer shall deposit the funds into a special revenue fund to be known as the “West Virginia prosecuting attorneys institute fund”. All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, two thousand five, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.

(i) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than those issues consistent with the duties of the institute set forth in subsection (d) of this section.

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.
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.

CHAPTER 240

(H. B. 2525 — By Delegates Douglas, Kuhn, Butcher, Hatfield, Manchin, Prunty and Leggett)

[Passed March 28, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

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

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

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of

*Clerk's Note: This section was also amended by H. B. 2912 (Chapter 262), which passed subsequent to this act.
the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, that no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility shall have the power and authority to make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article shall limit the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board.

(d) The public employees insurance agency shall terminate in the manner provided in article ten, chapter four of this code, on the first day of July, two thousand two, unless extended by legislation enacted before the termination date.
AN ACT to amend and reenact section four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

(a) There is hereby continued the public employees insurance agency finance board, which consists of the director and six members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That of the two members added to the board by the amendment of this section, enacted during the regular legislative session, one thousand
nine hundred ninety-nine, the at-large member shall be ap-
pointed for an initial term of two years and the member
representing organized labor shall be appointed for a term of
four years. Members may be reappointed for successive terms.
No more than four members (including the director) may be of
the same political party.

(b) Of the six members appointed by the governor, one
member shall represent the interests of education employees,
one shall represent the interests of public employees, one shall
represent the interests of organized labor and three shall be
selected from the public at large. The governor shall appoint the
member representing the interests of education employees from
a list of three names submitted by the largest organization of
education employees in this state. The governor shall appoint
the member representing the interests of organized labor from
a list of three names submitted by the state's largest organiza-
tion representing labor affiliates. The three members appointed
from the public shall each have experience in the financing,
development or management of employee benefit programs. All
new appointments made after the first day of July, one thousand
nine hundred ninety-four, shall be selected to represent the
different geographical areas within the state and all members
shall be residents of West Virginia. No member may be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty, neglect of fiduciary
duty or other specific responsibility imposed by this article, or
gross immorality.

(c) The director shall serve as chairperson of the finance
board, which shall meet at times and places specified by the call
of the director or upon the written request to the director of at
least two members. Notice of each meeting shall be given in
writing to each member by the director at least three days in
advance of the meeting. Four members constitutes a quorum.
The board shall pay each member the same compensation and
expense reimbursement as is paid to members of the Legislature for their interim duties, as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day engaged in the discharge of official duties.

(d) Pursuant to the provisions of article ten, chapter four of this code, the finance board shall terminate on the first day of July, two thousand three, unless extended by legislation enacted before the termination date.

(e) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code; any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

CHAPTER 242

(S. B. 717 — By Senators Craigo, Unger, Oliverio, Anderson, Deem, Kessler, McCabe, Redd, Ross and Sharpe)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]
AN ACT to amend and reenact article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating to the West Virginia small business linked deposit program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. WEST VIRGINIA SMALL BUSINESS LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package; counseling.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; accountability and reporting.

§12-1A-7. Liability of state.

§12-1A-8. Penalties for violation of article.

§12-1A-9. Effective dates.

§12-1A-1. Definitions.

(a) "Treasurer" means the West Virginia treasurer's office.

(b) "Eligible small business" means any business that: (1) employs fifty or fewer employees and has gross annual receipts of five million dollars or less; (2) is headquartered in this state; and (3) is organized for profit.

(c) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public
depository of state funds and agrees to participate in the linked deposit program.

(d) "Linked deposit" means a certificate of deposit placed by the treasurer with an eligible lending institution at three percent below current market rates, as determined and calculated by the treasurer, provided the institution agrees to lend the value of the deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that the high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the small business linked deposit program to create an availability of lower-cost funds to inject needed capital into the small business community, sustain or improve business profitability, and protect the jobs of citizens of this state. The Legislature further finds that the involvement of both the treasurer in facilitating the deposit of funds for the program and the small business development center in determining which businesses will receive the benefits of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small businesses throughout the state and thereby maximizing the impact of the program.
§12-1A-3. Limitations on investment in linked deposits.

(a) The treasurer shall invest in linked deposits. The total amount so deposited at any one time shall not exceed, in the aggregate, twenty million dollars.

(b) Small business linked deposit funds shall be used to provide each applicant with no more than one hundred fifty thousand dollars for each reduced rate loan.

(c) When deciding how much to invest in linked deposits, the treasurer shall give priority to the investment, liquidity and cash flow needs of the state.

§12-1A-4. Applications for loan priority; loan package; counseling.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible small business and whether the loan application meets the criteria established in this article.

(b) An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. A reduced rate loan shall not be used to refinance an existing debt. Whoever knowingly makes a false statement concerning an application shall be prohibited from entering into the linked deposit loan program and shall be subject to the criminal penalties of section eight of this article.

(c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located, the number of jobs to be created and
preserved by the receipt of the loan, the reasonable ability of the 
small business to repay the loan and other factors considered 
appropriate by the eligible financial institution.

(d) A small business receiving a linked deposit loan shall 
receive supervision and counseling provided by the small 
business development center as a condition of remaining in 
good standing with the lending institution and the state and as 
a condition of having the loan renewed for up to four years. The 
services available from the small business development center 
include eligibility certification, business planning, quarterly 
financial statement review and loan proposal assistance. 
Eligible small businesses shall also grant the lending institution 
the right to provide information on the status of the loan to the 
small business development center so as to assist the small 
business.

(e) The eligible financial institution shall forward to the 
treasurer a linked deposit loan package, in the form and manner 
as prescribed by the small business development center and the 
treasurer. The package shall include the amount of the loan 
requested and the number of jobs to be created or sustained by 
each eligible small business. The institution shall certify that 
each applicant is an eligible small business, and may, for each 
business, certify the present borrowing rate applicable to each 
specific eligible business.

(f) The rate charged to the eligible small business shall not 
exceed the prime interest rate as published by the wall street 
journal on the date that the eligible financial institution certifies 
the applicant is eligible.

§12-1A-5. Acceptance or rejection of loan package; deposit 
agreement.

(a) The small business development center in cooperation 
with the treasurer may accept or reject a linked deposit loan
package or any portion thereof based on the criteria prescribed by this article.

(b) The treasurer shall reject any linked deposit loan package if the small business requesting the loan is not in good standing with the state tax department and the bureau of employment programs and these agencies shall provide the treasurer with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

(c) Upon acceptance of the linked deposit loan package or any portion thereof by the small business development center in cooperation with the treasurer, the treasurer may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

(d) The eligible lending institution shall enter into a deposit agreement with the treasurer in a form in compliance with the requirements of this article. The deposit agreement shall reflect the market conditions prevailing in the lending area and the period of time in which the lending institution is to lend funds upon the placement of a linked deposit. The deposit agreement shall include provisions for the certificates of deposit to be placed for a maximum of four years with annual renewals. Interest shall be paid at the times determined by the treasurer.

§12-1A-6. Rate of loan; certification and monitoring of compliance; accountability and reporting.

(a) Upon the placement of a linked deposit with an eligible lending institution, the institution is required to lend the funds to each approved eligible small business listed in the linked deposit loan package required in subsection (d), section four of
this article and in accordance with the deposit agreement required by subsection (c), section five of this article. The loan shall be at three percent below the present borrowing rate applicable to each business. A certification of compliance with this section in the form and manner as prescribed by the small business development center and the treasurer shall be required of the eligible lending institution.

(b) The small business development center and the treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions. The small business development center shall monitor the compliance of eligible small businesses.

(c) By the first day of January of each year, the small business development center shall report on the linked deposit program for the preceding calendar year to the West Virginia development office, which shall then report to the joint committee on government and finance. The reports shall set forth the name of the small business, terms, delinquency and default rates, job growth, gross income evaluation and amounts of the loans upon which the linked deposits were based.

§12-1A-7. Liability of state.

The state, the treasurer and the small business development center are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the board.

§12-1A-8. Penalties for violation of article.

Any person who violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
§12-1A-9. Effective dates.

This article shall be effective from the first day of July, two thousand one, through the first day of July, two thousand six.
ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-3. Deposit of moneys not due the state.

All officials and employees of the state authorized to accept moneys that the state treasurer determines or that this code specifies are not funds due the state pursuant to the provisions of section two of this article shall deposit the moneys, as soon as practicable, in the manner and in the depository specified by the treasurer. The treasurer shall prescribe the forms and procedures for depositing the moneys. A spending unit shall obtain written authorization from the state treasurer before depositing the funds in an account outside the treasury. Upon the treasurer's written revocation of the authorization, the spending unit shall deposit funds deposited in an account outside the treasury in the treasury in the manner and in the depository specified by the treasurer. The treasurer is the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article. The treasurer shall on a quarterly basis provide the legislative auditor with a report of all accounts approved by him or her.

CHAPTER 244

(S. B. 565 — By Senator Chafin)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
by adding thereto a new section, designated section twelve, all relating to the supervision of local government offices; ensuring that chief inspector issues all reports and audits timely and requirements are abided by; providing cost of services provided by the chief inspector to be charged if a municipality undergoes a single audit related to a federal grant; allowing raising the cap on the cost of services provided to certain utility or park systems; interest earned on costs collected for services of the chief inspector to go into the revolving fund; and providing for the development of an intern program for students pursuing a graduate degree in business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

§6-9-12. Business intern program.

§6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

The chief inspector shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all local governmental offices and agencies and for all public accounts of the same class and which shall exhibit true accounts and detailed statements for all public funds collected, received and
expended for any purpose by all local governmental officers, employees or other persons. The accounts shall show the receipt, use and disposition of all public property under the control of local governmental officers, employees or other persons and any income derived therefrom and of all sources of public income, the amounts due and received from each source, all receipts, vouchers and other documents kept or required to be kept and necessary to identify and prove the validity of every transaction, all statements and reports made or required to be made for the internal administration of the office to which they pertain and all reports published or required to be published for the information of the people regarding any and all details of the financial administration of public affairs. The chief inspector shall prescribe receipt forms for all local governmental offices and agencies and shall formulate, prescribe and install a uniform system with respect to the utilization, processing and disposition of receipts given as evidence of moneys or property collected or received by local governmental offices and agencies. The chief inspector shall also formulate, prescribe and install a system of accounting for the civil accounts of the offices of the magistrates, which shall exhibit true accounts and detailed statements of the services rendered, the name and address of the persons for whom rendered, the charges made and collected therefor and other information as may be necessary to identify the transaction.

The chief inspector is vested and charged with the duties of administering and enforcing the provisions of this article and is authorized to promulgate and to enforce such rules as may be necessary to implement the administration and enforcement. The chief inspector shall use due diligence to ensure that all reports and audits are issued in a timely manner and to comply with all federal audit and bonded indebtedness requirements so as not to jeopardize the entity’s funding. The power and authority herein granted shall be in addition to all other power
and authority vested by law in the state tax commissioner as chief inspector or otherwise.

§6-9-8. Payment of cost of services of chief inspector; revolving fund.

The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution shall be paid by the county commission of the county; the cost thereof as to any board of education shall be paid by the board; the cost thereof as to any municipal corporation shall be paid by the authorities thereof: Provided, That in municipalities in which the total revenue from all taxes does not exceed the sum of two thousand dollars annually, the cost including the per diem and all actual costs and expenses of the services shall not exceed the sum of sixty dollars. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help and the other costs as may be necessary to enable them to perform the services required, but the costs shall not exceed the sum of two thousand dollars for services rendered to a Class III or a Class IV municipality: Provided, however, That the chief inspector may charge up to an additional two thousand dollars for costs incurred for each service or act performed for a utility or park system owned by a Class III or Class IV municipality: Provided further, That if a municipality is required to undergo a single audit by the federal agency or agencies making a grant, the foregoing cost limitations do not apply: And provided further, That the chief inspector shall provide a written quote for all costs in advance for all services required by this article. The chief inspector shall render to the agency liable for the cost a statement thereof as soon after the same was incurred as practicable and it shall be the duty of the agency to allow the same and cause it to be paid promptly in the manner that other claims and accounts are
allowed and paid and the total amount shall constitute a debt against the local agency due the state. Whenever there is in the state treasury a sum of money due any county commission, board of education or municipality from any source, upon the application of the chief inspector, the same shall be at once applied on the debt aforesaid against the county commission, board of education or municipality and the fact of the application of the fund shall be reported by the auditor to the county commission, board of education or municipality, which report shall be a receipt for the amount therein named. All money received by the chief inspector from this source shall be paid into the state treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of the services, unless otherwise directed by the Legislature. The cost of any examination, service or act by the chief inspector made necessary, or the part thereof as was made necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from that person, on motion, on ten days' notice in any court having jurisdiction.

For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:

1. There shall be appropriated from the state fund general revenue the sum of twenty-five thousand dollars to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in this article, shall constitute a fund to defray the cost of this service.

2. Payments received for the cost of services of the chief inspector's office and interest earned on the invested balance of the chief inspector's revolving fund shall be deposited into this
revolving fund, which shall be known as the chief inspector’s fund.

(3) Any appropriations made to this fund may not be considered to have expired at the end of any fiscal period.

§6-9-12. Business intern program.

Beginning the first day of July, two thousand two, the chief inspector shall develop in conjunction with the graduate business programs at West Virginia university and Marshall university an intern program which utilizes students pursuing a graduate degree in business, economics or accounting to assist in the auditing function of the office of the chief inspector. This program shall provide that those students who satisfactorily complete the program shall receive up to two hours credit toward their degree.

CHAPTER 245

(Com. Sub. for H. B. 2225 — By Delegates Ennis, Stemple, Williams, Fletcher and Armstead)

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

AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article nine-b, chapter eighteen, all relating to examinations into affairs of local public offices; audit and review procedures of county boards of education; eliminating requirement of audit by office of chief inspector every three years; and requiring chief
inspector furnish list of local government offices or political subdivisions to Legislature.

Be it enacted by the Legislature of West Virginia:

That section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirteen, article nine-b, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.

CHAPTER 6. MISCELLANEOUS PROVISIONS.

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and the year of its most recent completed audit.
(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit or review reports issued in accordance with uniform procedures of the chief inspector.

(c) A county board of education may elect, by the first day of May of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the state board of school finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the state board of school finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(d) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the state register and send a copy to the state board of
education, the state board of school finance and to local
governments who request a copy.

(e) A county board of education, when procuring the
services of a certified public accountant on the chief inspector’s
list, shall follow the procurement standards prescribed by the
grants management common rule, OMB Circular A-102
“Grants and Cooperative Agreements with State and Local
Governments” in effect for the fiscal year being examined, or
in any replacement circular or regulation of the office of
management and budget and in addition shall follow those
standards as determined by the office of chief inspector.

(f) The approved independent certified public accountant
making examinations under this section shall comply with
requirements of this section applicable to examinations
performed by the chief inspector, including applicable require-
ments of the federal government and uniform procedures of the
chief inspector applicable to examinations of county boards of
education.

(1) Upon completion of the certified public accountant’s
examination and audit or review report, the certified public
accountant shall promptly send two copies of the certified
report to the county board of education who shall file one copy
with the federal audit clearing house. The certified public
accountant shall send one copy of the certified report to the
state board of school finance, and one copy to the chief
inspector.

(2) If any examination discloses misfeasance, malfeasance
or nonfeasance in office on the part of any public officer or
employee, the certified public accountant shall submit his or her
recommendation to the chief inspector regarding the legal
action the approved certified public accountant considers
appropriate, including, but not limited to, whether criminal
prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) A local government office that is subject to separate examination under this section by the chief inspector may elect to have a review performed to satisfy the annual examination requirement if it is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than three hundred thousand dollars during the fiscal year for which the election is made: Provided, That an audit must be performed at least once every three years by the chief inspector and shall be performed whenever during the course of a review the chief inspector determines that special or unusual circumstances warrant making an audit.

(i) When not required to have an audit by then existing federal regulations or by any law or contract provision and the financial affairs of a local government are not examined annually but are examined on a biennial or other periodic basis,
the chief inspector or his or her designee may, in his or her
discretion, after making an audit of one of the fiscal years,
make a review of the years remaining to be examined.

(j) The chief inspector or any authorized assistant may issue
subpoenas and compulsory process, direct the service thereof
by any sheriff, compel the attendance of witnesses and the
production of books and papers at any designated time and
place, selected in their respective county, and administer oaths.

(k) If any person refuses to appear before the chief inspec-
tor or his or her authorized assistant when required to do so,
refuses to testify on any matter or refuses to produce any books
or papers in his or her possession or under his or her control, he
or she is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not more than one hundred dollars and impris-
oned in the county or regional jail not more than six months.

(l) A person convicted of willful false swearing in an
examination is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than one hundred dollars and
imprisoned in the county or regional jail not more than six
months.

(m) Except as otherwise provided in this section, a copy of
the certified report of each examination shall be filed in the
office of the commissioner, chief inspector with the governing
body of the local government and with other offices as pre-
scribed in uniform procedures of the chief inspector.

(n) If any examination discloses misfeasance, malfeasance
or nonfeasance in office on the part of any public officer or
employee, a certified copy of the report shall be filed by the
chief inspector with the proper legal authority of the agency, the
prosecuting attorney of the county wherein the agency is
located and with the attorney general for such legal action as is
proper. At the time the certified audit report is filed, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the attorney general in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.

(o) If the proper legal authority or prosecuting attorney, within nine months of receipt of the certified audit report and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(p) A local government that is not a county board of education may elect, by the first day of May of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: Provided, That no less than once every three-year period the audit of a local government shall be performed by the office of chief inspector. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit:
Provided, however, That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

CHAPTER 18. EDUCATION.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-13. Inspection and audit of school finance administration.

The board of finance may, through its duly authorized representatives, make inspections and examinations of the fiscal administration of a county school district. The inspection and examination may extend to any matter or practice subject to regulation by the state board. Regular and special examinations may be made by a certified public accountant approved pursuant to section seven, article nine, chapter six of this code selected by the county board in accordance with nonemergency regulations submitted by the chief inspector, or by the chief inspector himself or herself. All examinations shall be made as provided in section seven, article nine, chapter six of this code. The board may make selective audits to determine the accuracy of statements and reports made by a county board or superintendent.

The report of the examination shall be certified to the county board, which should include the identification of procedures and practices found to not be in accordance with the requirements of the state board. The county board shall comply with the instructions forthwith.

The state board, through its duly authorized representatives, shall have full access to all books, records, papers and documents of the county board.
AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five of said chapter, all relating to the public service commission; making certain motor vehicles subject to the safety and insurance rules of the public service commission; exempting certain vehicles from certain regulation of the public service commission; providing a minimum amount of required insurance for certain vehicles; eliminating the requirement of costs being assessed against the losing party; and clarifying the employment status of certain employees of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Purposes, Definitions and Exemptions.
5. Powers and Duties of Commission.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.
The provisions of this chapter, except where specifically otherwise provided, do not apply to:

(1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers: Provided, That the vehicles and their operators are subject to the safety rules promulgated by the commission;

(2) Motor vehicles owned and operated by the United States of America, the state of West Virginia or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any of their departments, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or other legitimate transportation for the schools as the commission may specifically authorize;

(3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards where they are to be used: Provided, That the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the safety and insurance rules promulgated by the commission;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad service;
(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That the vehicles and their operators are subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling the products: Provided, That the vehicles and their operators are subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;

(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial, institutional and industrial customers, transported free of charge from the customers to a facility for further processing: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission and the vehicles that are exempted by this subdivision and are also operated by common carriers by motor vehicle or contract carriers by motor vehicle, and their operators are subject to the insurance rules promulgated by the commission;
(10) Motor vehicles specifically preempted from state
economic regulation of intrastate motor carrier operations by
the provisions of 49 U. S. C. §14501 as amended by title I,
section 103 of the federal “Interstate Commerce Commission
Termination Act of 1995”: Provided, That the vehicles and their
operators are subject to the safety regulations promulgated by
the commission and the vehicles that are exempted by this
subdivision and are also operated by common carriers by motor
vehicle or contract carriers by motor vehicle, and their opera-
tors are subject to the insurance rules promulgated by the
commission;

(11) Motor vehicles designated by the West Virginia bureau
of senior services for use and operation by local county aging
programs: Provided, That the vehicles and their operators are
subject to the safety rules promulgated by the commission;

(12) Motor vehicles designated by the West Virginia
division of public transit operated by organizations that receive
federal grants from the federal transit administration: Provided,
That the vehicles and their operators are subject to the safety
and insurance rules promulgated by the commission.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-5. Further regulatory powers of the commission.

(a) The commission shall prescribe rules of practice and
procedure including, the method and manner of holding
hearings, taking evidence, and entering orders. In the investiga-
tion, preparation and hearing of cases, the commission is not
bound by the technical rules of pleading and evidence, but may
exercise discretion to facilitate its efforts to understand and
learn all the facts bearing upon the right and justness of the
matters before it.
(b) The commission shall employ personnel as may be necessary to carry out the provisions of this chapter and fix their respective salaries or compensation. The commission may designate employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter. These employees are empowered to administer oaths in all parts of the state so far as the exercise of this power is properly incidental to the performance of their duties in accordance with the provisions of this chapter.

(c) The commission shall prescribe a schedule of fees to accompany (i) applications for certificates of convenience and necessity, (ii) applications for permits, and (iii) other filings and recordings of other papers with the commission. The commission shall prescribe a schedule of fees to be charged for (i) the certification of all records and papers (ii) the payment of witnesses and (iii) other costs necessary and incidental to hearings before it or its employees. Sums collected in accordance with this subsection, except witness fees, are to be paid into the state treasury and credited to the public service commission motor carrier fund provided for in section six, article six of this chapter. Witness fees are to be paid to the persons entitled to them.

(d) The commission shall establish a system of accounts to be kept by motor carriers; or classify motor carriers and establish a system of accounts for each class. The commission shall prescribe the manner in which the accounts are to be kept. It may prescribe the form of accounts, records, and memoranda to be kept by the motor carriers, including the accounts, records, and memoranda for the movement of traffic, the receipts and expenditures of money, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this chapter.
(e) The commission shall require persons subject to the provisions of this chapter to furnish any information in their possession or obtainable from their accounting or other records, respecting rates, charges, classifications or practices in conducting their business. The commission has the authority to inspect any books, papers or reports. Any statements required by this subsection are to be under oath when required by the commission. The form of all reports required under this chapter are to be prescribed by the commission.

(f) The commission as a whole or any of its members or designated employees, shall subpoena witnesses, take testimony and administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the commission or its designated employees, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing within the state. In the case of disobedience to a subpoena or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in the state in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. The court, in the case of a refusal to obey the subpoena issued to any person or to any motor carrier subject to the provisions of this chapter, shall issue an order requiring the person or motor carrier to appear before the commission or its designated employees and produce all requested books and papers and give evidence relating to the matter in question. Any failure to obey the order of the court may be punished by the court as contempt. A claim that testimony or evidence may tend to incriminate the person giving the testimony or evidence does not excuse the person from testifying, but the person may not be prosecuted for any offense concerning which he or she has been compelled to testify.
(g) The commission shall require common carriers by motor vehicle and contract carriers by motor vehicle subject to the provisions of this chapter either to procure insurance from a company authorized to write insurance in West Virginia, to qualify as a self-insurer, or to deposit security upon terms and conditions and for limits of liability as the commission shall determine to be necessary for the reasonable protection of the traveling, shipping, and general public against injury, loss, damage or default for which the carrier may be liable. It shall prescribe rules and regulations governing the filing of evidence of insurance and security with the commission. In fixing the amount of the insurance policy or policies, the qualifications as a self-insurer, or the deposit of security, the commission shall give due consideration to the character and amount of traffic, the value of the property transported, the number of persons affected, and the degree of danger involved in any motor carrier operation: Provided, That the amount set by the commission for for-hire vehicles, that haul nonhazardous property with a gross vehicle weight of ten thousand or more pounds, shall be at least seven hundred fifty thousand dollars.

(h) The commission shall cooperate with the federal government or any other commission or organized delegated authority to regulate interstate or foreign commerce by motor vehicles to ensure that the transportation of persons and property by motor vehicles in interstate and foreign commerce into and through the state of West Virginia may be regulated and the laws of the United States and the state of West Virginia enforced and administered cooperatively in the public interest.

(i) The commission shall make agreements on behalf of the state of West Virginia with any other state or states providing for reciprocal rights, privileges, and courtesies between the licensees or holders of certificates and permits of the state or states and the state of West Virginia. These agreements may include provisions regarding certificates and permits, fees,
assessments, and uniform vehicle identification cards, and the
transportation of either persons or property into or through the
respective state or states and the state of West Virginia. All
existing agreements between a state or states and the state of
West Virginia for reciprocal rights, privileges, and courtesies
may, provided constitutional and contractual rights are not
violated, be declared void by the commission, and new agree-
ments negotiated.

(j) The commission shall promulgate (i) safety rules
applicable to motor vehicles subject to the provisions of this
chapter, (ii) rules governing the qualifications and maximum
hours of service of drivers and chauffeurs of common and
contract carriers by motor vehicle of passengers and property
subject to the provisions of this chapter and (iii) any other rules
that the commission may deem proper to carry out the provi-
sions and intent of this chapter.

CHAPTER 247

(Com. Sub. for H. B. 2830 — By Delegates
Manuel, Pethtel and Faircloth)

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

AN ACT to amend and reenact section fifty-three, article three,
chapter eleven-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the refund rights of a
purchaser where the property is nonexistent.

Be it enacted by the Legislature of West Virginia:
That section fifty-three, 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, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-53. Refund to purchaser of payment made at deputy commissioner’s sale where property is nonexistent.

If, within forty-five days following the approval of the sale by the auditor, the purchaser discovers that the property purchased at the sale is nonexistent, the purchaser shall submit the abstract or certificate of an attorney-at-law that the property is nonexistent. Upon receipt of the abstract or certificate, the deputy commissioner shall cause the moneys so paid to be refunded. Upon refund of the amount bid at a deputy commissioner’s sale, the deputy commissioner shall inform the assessor that the property does not exist for the purpose of having the assessor correct the error. For failure to meet this requirement, the purchaser shall lose all benefits of his purchase.

CHAPTER 248

(Com. Sub. for S. B. 244 — By Senators Wooton, Jackson, Kessler, Chafin, Mitchell, Rowe, Hunter, Ross and Burnette)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the antitrust
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.


All money received by the state as a result of actions by the attorney general pursuant to this article or to the federal antitrust laws shall be placed in a separate fund by the state treasurer, to be known as the antitrust enforcement fund, and shall be used solely for the payment of fees, costs and expenses incurred by the attorney general in connection with antitrust enforcement activities and the first three hundred thousand dollars in this fund shall not expire at the end of each fiscal year but shall, by operation of law, be automatically reappropriated from year to year and all sums in excess of three hundred thousand dollars remaining in such fund shall expire at the end of each fiscal year and shall revert to the general revenue fund.

CHAPTER 249

(Com. Sub. for H. B. 2851 — By Delegates Staton, J. Smith and Keener)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article seven-a, chapter eighteen of said code, all relating to compliance of the public employees retirement system, and the state teachers retirement system, with the federal tax law qualification requirements of section 401(a) and related sections of the Internal Revenue Code of 1986 as applicable to governmental plans; definition of leased employees and clarification of ineligibility of leased employees to participate in the public employees retirement system; including within the definition of political subdivision the regional community policing institute; clarification of definition of regular interest; and addition of definition of pick up service in the teachers retirement system.

Be it enacted by the Legislature of West Virginia:

That sections two and seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

18. Education.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
§5-10-17. Retirement system membership.

§5-10-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

4 (1) “State” means the state of West Virginia;

5 (2) “Retirement system” or “system” means the West Virginia public employees retirement system created and established by this article;

8 (3) “Board of trustees” or “board” means the board of trustees of the West Virginia public employees retirement system;

11 (4) “Political subdivision” means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-
seven: Provided, however, That the regional community policing institute which participated in the public employees retirement system before the first day of July, two thousand is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the public employees retirement system after the first day of July, two thousand;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the Legislature, the clerk of the House of Delegates, the clerk of the Senate, employees of the Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in
which the employee served, members of the legislative body of any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article, the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;

(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to the first day of July, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article. This revised definition is retroactive and applicable to the first day of April, one thousand nine hundred eighty-eight, and thereafter;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his or her credit as provided in this article;
(14) "Limited credited service" means service by employees of the West Virginia educational broadcasting authority, in the employment of West Virginia university, during a period when the employee made contributions to another retirement system, as required by West Virginia university, and did not make contributions to the public employees retirement system: Provided, That while limited credited service can be used for the formula set forth in section twenty-one, subsection (e) of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(15) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him or her to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of his or her remuneration which is not paid in money;

(16) "Final average salary" means either:

(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during any period of three consecutive years of his or her credited service contained within his or her ten years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If he or she has less than five years of credited service, the average of the annual rate of compensation received by him or her during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the
Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November in any one or more of those three years, and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the state of West Virginia; or (ii) “final average salary” determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of one thousand five hundred
dollars multiplied by eight, whichever computation as to the member produces the higher annual compensation);

(17) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members’ deposit fund, together with regular interest on the contributions;

(18) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(19) “Annuity” means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(20) “Annuity reserve” means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees adopts from time to time;

(21) “Retirement” means a member’s withdrawal from the employ of a participating public employer with an annuity payable by the retirement system;

(22) “Actuarial equivalent” means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees adopts from time to time; and

(23) “Retroactive service” means: (1) Service an employee was entitled to, but which the employer has not withheld or paid for; or (2) that service from the first day of July, one thousand nine hundred sixty-one, and the date an employer decides to become a participating member of the public employees retirement system; or (3) service prior to the first day of July,
one thousand nine hundred sixty-one, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.16;

(24) "Required beginning date" means the first day of April of the calendar year following the later of: (A) the calendar year in which the member attains age seventy and one-half, or (B) the calendar year in which the member ceases providing service covered under this system to a participating employer;

(25) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended; and

(26) "Plan year" means the same as referenced in section forty-two of this article.

§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the participating public employer on and after that date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after that date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, any of the state teachers retirement systems, the judges retirement system, the retirement system of the division of public safety, the deputy sheriff retirement system or any municipal retirement system for either, or both, policemen or
firemen; and the bureau of employment programs, by the commissioner of the bureau, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That the exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he or she once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the division of public safety, the deputy sheriff retirement system and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the division of public safety or of the deputy sheriff retirement system: Provided further, That the membership of the retirement system does not include any person who becomes employed by the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services or eastern panhandle mental health center on or after the first day of July, one thousand nine hundred ninety-seven: And provided further, That membership of the retirement system does not include any person who becomes a member of the federal railroad retirement act on or after the first day of July, two thousand.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate and any employee of the state Legislature whose employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is so employed during regular sessions or during the interim between sessions in seven consecutive calendar years,
as certified by the clerk of the house in which the employee
served, or any member of the legislative body of any other
political subdivision shall become a member of the retirement
system provided he or she notifies the retirement system in
writing of his or her intention to be a member of the system and
files a membership enrollment form as prescribed by the board
of trustees, and each person, upon filing his or her written
notice to participate in the retirement system, shall by that act
authorize the clerk of the House of Delegates or the clerk of the
state Senate or such person or legislative agency as the legisla-
tive body of any other political subdivision shall designate to
deduct the member's contribution, as provided in subsection
(b), section twenty-nine of this article, and after the deductions
have been made from the member's compensation, the deduc-
tions shall be forwarded to the retirement system.

(d) If question arises regarding the membership status of
any employee, the board of trustees has the final power to
decide the question.

(e) Any individual who is a leased employee is not eligible
to participate in the system. For the purposes of this article, the
term "leased employee" means any individual who performs
services as an independent contractor or pursuant to an agree-
ment with an employee leasing organization or other similar
organization. If a question arises regarding the status of an
individual as a leased employee, the board has final authority to
decide the question.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


"Teacher member" means the following persons, if
regularly employed for full-time service: (a) Any person
employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents [abolished], any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the division of health or the division of human services; and (l) employees of the state board of school finance, if such person was formerly employed as a teacher in the public schools.

"Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (a) Any county board of education; (b) the state board of education; (c) the West Virginia board of regents [abolished]; or (d) the teachers retirement board.

"Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent, and
every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" means the state teachers retirement system provided for in this article.

"Present teacher" means any person who was a teacher within the thirty-five years beginning the first day of July, one thousand nine hundred thirty-four, and whose membership in the retirement system is currently active.

"New entrant" means a teacher who is not a present teacher.

"Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

"Employment term" means employment for at least ten months, a month being defined as twenty employment days.

"Present member" means a present teacher who is a member of the retirement system.

"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

"Prior service" means all service as a teacher completed prior to the first day of July, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during the service.

"Pick-up service" means service that a member was entitled to, but which the employer has not withheld or paid for.
“Average final salary” means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided herein, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made.

“Accumulated contributions” means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

“Regular interest” means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the consolidated public retirement board.

“Refund interest” means interest compounded, according to the formula established in legislative rules, series seven of the consolidated public retirement board.

“Employer” means the agency of and within the state which has employed or employs a member.

“Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Refund beneficiary” means the estate of a deceased contributor, or a person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

“Earnable compensation” means the full compensation actually received by members for service as teachers whether
or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be considered a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the first day of July, one thousand nine hundred eighty.

“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Member” means a member of the retirement system.

“Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state.

“Deposit” means a voluntary payment to his account by a member.

“Plan year” means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.


“Required beginning date” means the first day of April of the calendar year following the later of: (a) the calendar year in which the member attains age seventy and one-half, or (b) the calendar year in which the member retires or ceases covered employment under the system.

The masculine gender shall be construed so as to include the feminine.
Age in excess of seventy years shall be considered to be seventy years.

CHAPTER 250

(H. B. 2080 — By Delegate Michael)

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

AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seventeen, article seven-a, chapter eighteen of said code, all relating to placing corresponding provisions in the teachers retirement system and the public employees retirement system; providing public employee retirement system service credit and teachers retirement system service credit for time worked in CETA (Comprehensive Employment and Training Act) programs; requirements; setting forth maximum attainable service credit; setting forth applicable time period to obtain service credit; specifying cost of service credit; granting service credit in teachers retirement system for former and present members of the state police death, disability and retirement fund in the same manner as is in the public employees retirement system; setting forth conditions to be met for credit; and setting forth required documentation to substantiate time for the service credit.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted; and that section seventeen, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

18. Education.

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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.

1 (a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules as the board of trustees shall from time to time adopt and based upon the following:

5 (1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim
16 days shall be cumulatively calculated so that any ten days,
17 regardless of calendar month or year, shall be calculated toward
18 any award of one month of service credit;

19 (2) Except for hourly employees, ten or more months of
20 service credit earned in any calendar year shall be credited as a
21 year of service: Provided, That no more than one year of
22 service may be credited to any member for all service rendered
23 by him or her in any calendar year and no days may be carried
24 over by a member from one calendar year to another calendar
25 year where the member has received a full year credit for that
26 year; and

27 (3) Service may be credited to a member who was em-
28 ployed by a political subdivision if his or her employment
29 occurred within a period of thirty years immediately preceding
30 the date the political subdivision became a participating public
31 employer.

32 (b) The board of trustees shall grant service credit to
33 employees of boards of health, the clerk of the House of
34 Delegates and the clerk of the state Senate, or to any former and
35 present member of the state teachers retirement system who
36 have been contributing members for more than three years, for
37 service previously credited by the state teachers retirement
38 system and shall require the transfer of the member's contribu-
39 tions to the system and shall also require a deposit, with
40 interest, of any withdrawals of contributions any time prior to
41 the member's retirement. Repayment of withdrawals shall be as
42 directed by the board of trustees.

43 (c) Court reporters who are acting in an official capacity,
44 although paid by funds other than the county commission or
45 state auditor, may receive prior service credit for time served in
46 that capacity.
(d) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full time employment with the participating employer within one hundred twenty days following the termination of the member's CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of December, two thousand one.

(e) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section the term “regular session” means day one through day sixty of a sixty-day legislative session or day one through day thirty of a thirty-day legislative session. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions and who have been or are employed during regular sessions or during the interim time
between regular sessions in seven consecutive calendar years, as certified by the clerk of the houses in which the employee served, shall receive service credit of six months for all regular sessions served, as certified by the clerk of the houses in which the employee served, or shall receive service credit of three months for each regular thirty-day session served prior to one thousand nine hundred seventy-one, as certified by the clerk of the houses in which the employee served, and shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: Provided, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member’s retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the houses in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session, and service of twenty-seven days of a thirty-day regular session occurring prior to one thousand nine hundred seventy-one constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the
service credit provided in this section for all regular and interim
sessions, and interim days worked by that employee, as
certified by the clerk of the houses in which the employee
served, regardless of when the session or interim legislative
employment occurred: Provided, however, That regular session
legislative employment for seven consecutive years may be
served in either or both houses of the Legislature.

Any employee may purchase retroactive service credit for
periods of employment in which contributions were not
deducted from the employee’s pay. In the purchase of service
credit for employment prior to the year one thousand nine
hundred eighty-nine in any department, including the Legisla-
ture, which operated from the general revenue fund and which
was not expressly excluded from budget appropriations in
which blanket appropriations were made for the state’s share of
public employees’ retirement coverage in the years prior to the
year one thousand nine hundred eighty-nine, the employee shall
pay the employee’s share. Other employees shall pay the state’s
share and the employee’s share to purchase retroactive service
credit. Where an employee purchases service credit for employ-
ment which occurred after the year one thousand nine hundred
eighty-eight, that employee shall pay for the employee’s share
and the employer shall pay its share for the purchase of
retroactive service credit: Provided, That no legislative
employee and no current or former member of the Legislature
may be required to pay any interest or penalty upon the
purchase of retroactive service credit in accordance with the
provisions of this section where the employee was not eligible
to become a member during the years he or she is purchasing
retroactive credit for or had the employee attempted to contrib-
ute to the system during the years he or she is purchasing
retroactive service credit for and such contributions would have
been refused by the board: Provided, however, That a legisla-
tive employee purchasing retroactive credit under this section
does so within twenty-four months of becoming a member of
the system or no later than the last day of December, two
thousand five, whichever occurs last: Provided further, That
once a legislative employee becomes a member of the retire-
ment system, he or she may purchase retroactive service credit
for any time he or she was employed by the Legislature and did
not receive service credit. Any service credit purchased shall be
credited as six months for each sixty-day session worked and
three months for each thirty-day session worked, and credit for
interim employment as provided in this subsection: And
provided further, That this legislative service credit shall also
be used for months of service in order to meet the sixty-month
requirement for the payments of a temporary legislative
employee member’s retirement annuity: And provided further,
That no legislative employee may be required to pay for any
service credit beyond the actual time he or she worked regard-
less of the service credit which is credited to him or her
pursuant to this section: And provided further, That any
legislative employee may request a recalculation of his or her
credited service to comply with the provisions of this section at
any time.

(f) Notwithstanding any provision to the contrary, the seven
consecutive calendar years requirement and the service credit
requirements set forth in this section shall be applied retroac-
tively to all periods of legislative employment prior to the
passage of this section, including any periods of legislative
employment occurring before the seven consecutive calendar
years referenced in this section.

(g) The board of trustees shall grant service credit to any
former or present member of the state police death, disability
and retirement fund who has been a contributing member of this
system for more than three years, for service previously
credited by the state police death, disability and retirement fund
if the member transfers all of his or her contributions to the
state police death, disability and retirement fund to the system.
created in this article, including repayment of any amounts withdrawn any time from the state police death, disability and retirement fund by the member seeking the transfer allowed in this subsection: Provided, That there shall be added by the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the public employees retirement system during the period of his or her membership in the state police death, disability and retirement fund plus interest at a rate determined by the board.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

*§18-7A-17. Statement and computation of teachers' service; qualified military service.

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "armed forces" includes women's army corps, women's appointed volunteers for emergency service, army nurse corps, spars, women's reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public

*Clerk's Note: This section was also amended by H. B. 2778 (Chapter 259), which passed prior to this act.
school teaching, and the salary equivalent for each year of that
service is the actual salary of the member as a teacher for his or
her first year of teaching after discharge from military service.
Prior service credit for military service shall not exceed ten
years for any one member, nor shall it exceed twenty-five
percent of total service at the time of retirement. Notwithstanding
the preceding provisions of this subsection, contributions,
benefits and service credit with respect to qualified military
service shall be provided in accordance with Section 414(u) of
the Internal Revenue Code. For purposes of this section,
“qualified military service” has the same meaning as in Section
414(u) of the Internal Revenue Code. The retirement board is
authorized to determine all questions and make all decisions
relating to this section and, pursuant to the authority granted to
the retirement board in section one, article ten-d, chapter five of
this code, may promulgate rules relating to contributions,
benefits and service credit to comply with Section 414(u) of the
Internal Revenue Code.

(c) For service as a teacher in the employment of the federal
government, or a state or territory of the United States, or a
governmental subdivision of that state or territory, the retire-
ment board shall grant credit to the member: Provided, That the
member shall pay to the system double the amount he or she
contributed during the first full year of current employment,
times the number of years for which credit is granted, plus
interest at a rate to be determined by the retirement board. The
interest shall be deposited in the reserve fund and service credit
granted at the time of retirement shall not exceed the lesser of
ten years or fifty percent of the member’s total service as a
teacher in West Virginia. Any transfer of out-of-state service,
as provided in this article, shall not be used to establish
eligibility for a retirement allowance and the retirement board
shall grant credit for the transferred service as additional service
only: Provided, however, That a transfer of out-of-state service
is prohibited if the service is used to obtain a retirement benefit
from another retirement system: Provided further, That salaries
paid to members for service prior to entrance into the retirement
system shall not be used to compute the average final salary of
the member under the retirement system.

(d) Service credit for members or retired members shall not
be denied on the basis of minimum income rules promulgated
by the teachers retirement board: Provided, That the member or
retired member shall pay to the system the amount he or she
would have contributed during the year or years of public
school service for which credit was denied as a result of the
minimum income rules of the teachers retirement board.

(e) No members shall be considered absent from service
while serving as a member or employee of the Legislature of
the state of West Virginia during any duly constituted session
of that body or while serving as an elected member of a county
commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as
a teacher while serving as an officer with a statewide profes-
sional teaching association, or who has served in that capacity,
and no retired teacher, who served in that capacity while a
member, shall be considered to have been absent from service
as a teacher by reason of that service: Provided, That the period
of service credit granted for that service shall not exceed ten
years: Provided, however, That a member or retired teacher
who is serving or has served as an officer of a statewide
professional teaching association shall make deposits to the
teachers retirement board, for the time of any absence, in an
amount double the amount which he or she would have
contributed in his or her regular assignment for a like period of
time.

(g) The teachers retirement board shall grant service credit
to any former or present member of the West Virginia public
employees retirement system who has been a contributing
member for more than three years, for service previously
credited by the public employees retirement system and: (1)
Shall require the transfer of the member's contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest at a rate of six percent compounded annually from the date of withdrawal to the date of payment. The interest paid shall be deposited in the reserve fund.

(h) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(i) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with
the participating employer to permanent full time employment
with the participating employer within one hundred twenty days
following the termination of the member’s CETA employment;
(2) the board must receive evidence that establishes to a
reasonable degree of certainty as determined by the board that
the member previously worked in CETA; and (3) the member
shall pay to the board an amount equal to the employer and
employee contribution plus interest at the amount set by the
board for the amount of service credit sought pursuant to this
subsection: Provided, however, That the maximum service
credit that may be obtained under the provisions of this
subsection is two years: Provided further, That a member must
apply and pay for the service credit allowed under this subsec-
tion and provide all necessary documentation by the thirty-first
day of December, two thousand one.

(j) If a member is not eligible for prior service credit or
pension as provided in this article, then his or her prior service
shall not be considered a part of his or her total service.

(k) A member who withdrew from membership may regain
his or her former membership rights as specified in section
thirteen of this article only in case he or she has served two
years since his or her last withdrawal.

(l) Subject to the provisions of subsections (a) through (l),
inclusive, of this section, the board shall verify as soon as
practicable the statements of service submitted. The retirement
board shall issue prior service certificates to all persons eligible
for the certificates under the provisions of this article. The
certificates shall state the length of the prior service credit, but
in no case shall the prior service credit exceed forty years.

(m) Notwithstanding any provision of this article to the
contrary, when a member is or has been elected to serve as a
member of the Legislature, and the proper discharge of his or
her duties of public office require that member to be absent
from his or her teaching or administrative duties, the time
served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: *Provided,* That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: *Provided, however,* That nothing herein may be construed to relieve the employer from making the employer contribution at the member’s regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: *Provided further,* That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: *And provided further,* That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.

CHAPTER 251

(H. B. 2516 — By Delegates Michael, Yeager, Manuel, Givens and H. White)

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

AN ACT to repeal section fifteen-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact section fifteen of said article, all relating generally to conferring on persons eligible for public employees retirement benefits credited service for time spent in the active service of the armed forces of the United States during a period of compulsory military service or a period of armed conflict; providing legislative intent; providing for limitation on years of credited service; providing requirements for eligibility for credited service; allowing suspension of employee’s contributions to retirement system and accumulation of credit balance in deposit fund with interest during period of military service; prohibiting duplicate credit for service; specifying powers of board of trustees of retirement system; providing for legislative rules; providing definitions; and providing for compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section fifteen-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section fifteen of said article be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15. Military service credit; qualified military service.

(a)(1) The Legislature recognizes the men and women of this state who have served in the armed forces of the United States during times of war, conflict and danger. It is the intent of this section to confer military service credit upon persons who are eligible at any time for public employees retirement benefits for any time served in active duty in the armed forces of the United States when the duty was during any period of compulsory military service or during a period of armed conflict, as defined in this section.
(2) In addition to any benefit provided by federal law, any member of the retirement system who has previously served in or enters the active service of the armed forces of the United States during any period of compulsory military service or during a period of armed conflict shall receive credited service for the time spent in the armed forces of the United States, not to exceed five years if the member:

(A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service and entry into military service during any period of compulsory military service or during periods of armed conflict.

(3) Any member of the retirement system who enters the active service of the armed forces of the United States during any period of compulsory military service or during a period of armed conflict shall receive the credit provided by this section regardless of whether he or she was a public employee at the time of entering the military service.

(4) If a member of the public employees retirement system enters the active service of the United States and serves during any period of compulsory military service or during any period of armed conflict, during the period of the armed service and until the member's return to the employ of a participating public employer, the member's contributions to the retirement system is suspended and any credit balance remaining in the member's deposit fund shall be accumulated at regular interest.

(5) No member may receive duplicate credit for service for a period of compulsory military service which falls under a period of armed conflict.
(6) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board of trustees have final power to determine the period.

(7) The board is empowered to consider a petition by any member whose tour of duty, in a territory that would reasonably be considered hostile and dangerous, was extended beyond the period in which an armed conflict was officially recognized, if that tour of duty commenced during a period of armed conflict, and the member was assigned to duty stations within the hostile territory throughout the period for which service credit is being sought. The board has the authority to evaluate the facts and circumstances peculiar to the petition, and rule on whether granting service credit for the extended tour of duty is consistent with the objectives of this article. In that determination, the board is empowered to grant full credit for the period under petition subject to the limitations otherwise applicable, or to grant credit for any part of the period as the board considers appropriate, or to deny credit altogether.

(8) The board of trustees may propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to administer the provisions of this section.

(b) For purposes of this section, the following definitions apply:

(1) “Period of armed conflict” means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and any other period of armed conflict by the United States, including, but not limited to, those periods sanctioned by a declaration of war by the United States Congress or by executive or other order of the president.
(2) "Spanish-American War" means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fourth day of July, one thousand nine hundred two, and includes the Philippine Insurrection, the Boxer Rebellion, and in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on the twenty-first day of April, one thousand eight hundred ninety-eight, and ending on the fifteenth day of July, one thousand nine hundred three.

(3) "The Mexican border period" means the period beginning on the ninth day of May, one thousand nine hundred sixteen, and ending on the fifth day of April, one thousand nine hundred seventeen, in the case of a veteran who during the period served in Mexico, on its borders or in the waters adjacent to it.

(4) "World War I" means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the eleventh day of November, one thousand nine hundred eighteen, and in the case of a veteran who served with the United States military forces in Russia, means the period beginning on the sixth day of April, one thousand nine hundred seventeen, and ending on the first day of April, one thousand nine hundred twenty.

(5) "World War II" means the period beginning on the seventh day of December, one thousand nine hundred forty-one, and ending on the thirty-first day of December, one thousand nine hundred forty-six.

(6) "Korean conflict" means the period beginning on the twenty-seventh day of June, one thousand nine hundred fifty, and ending on the thirty-first day of January, one thousand nine hundred fifty-five.
(7) “The Vietnam era” means the period beginning on the twenty-eighth day of February, one thousand nine hundred sixty-one, and ending on the seventh day of May, one thousand nine hundred seventy-five, in the case of a veteran who served in the Republic of Vietnam during that period; and the fifth day of August, one thousand nine hundred sixty-four, and ending on the seventh day of May, one thousand nine hundred seventy-five, in all other cases.

(8) “Persian Gulf War” means the period beginning on the second day of August, one thousand nine hundred ninety, and ending on the eleventh day of April, one thousand nine hundred ninety-one.

(c) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d of this chapter, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

CHAPTER 252

(H. B. 2607 — By Delegates Staton, Varner and Pino)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-two-c, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; deleting certain restrictions on persons who exercised early retirement options and setting forth an effective date.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-c, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22c. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid. The Legislature further
finds that maintaining an actuarially sound retirement fund is a
necessity and that the reemployment of persons who retire
under this section in any manner, including reemployment on
a contract basis, is contrary to the intent of the early retirement
program and severely threatens the fiscal integrity of the
retirement fund.

(a) For the purposes of this section: (1) “Contract” means
any personal service agreement, not involving the sale of
commodities, that cannot be performed within sixty days or that
exceeds two thousand five hundred dollars in any twelve-month
period. The term “contract” does not include any agreement
obtained by a retirant through a bidding process and which is
for the furnishing of any commodity to a government agency
and that term does not include any person who retired under
this section who works as a contract employee for the Legisla-
ture when such employment commences after the thirty-first
day of December, one thousand nine hundred ninety-nine; (2)
“governmental entity” means the state of West Virginia; a
constitutional branch or office of the state government, or any
subdivision thereof; a county, city or town in the state; a county
board of education; a separate corporation or instrumentality
established pursuant to a state statute; any other entity currently
permitted to participate in any state public retirement system or
the public employees insurance agency; or any officer or
official of any entity listed above who is acting in his or her
official capacity; (3) “part-time elected or appointed office”
means any elected or appointed office that pays annual compen-
sation of less than two thousand five hundred dollars or requires
less than sixty days of service in any twelve-month period; (4)
“substitute teacher” means a teacher, public school librarian,
registered professional nurse employed by the county board of
education or any other person employed for counseling or
instructional purposes in a public school in this state who is
temporarily fulfilling the duties of an existing real person
(b) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight (or as extended by eligibility qualification requirement, as hereinafter specified), eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:
A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member’s final average salary factor of computation.

Active, contributing members who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, and make use of the incentive retirement program because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine, with proper credit to be granted for such extended period: Provided, That they shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he shall not receive an
incentive option under this section during the term of service in
said office, but shall receive his or her annuity calculated on
regular basis, as if originally taken not under this section but on
such regular basis. At the end of such term and cessation of
service in such office during which the member shall rejoin and
reenter the retirement system and pay contributions therefor,
such regular annuity shall be recalculated and an increased
annuity due to such additional employment shall be granted and
computed on regular basis and in similar manner as under
section forty-eight of this article. In respect of an appointive
office, as distinguished from an elective office, any person
retiring under this section and thereafter serving in such
appointive office shall not receive an incentive option under
this section during the term of service in said office, but the
same shall be suspended during such period: \textit{And provided
further}, That at the end of such term and cessation of service in
such appointive office the incentive option provided for under
this section shall be resumed: \textit{And provided further}, That any
person elected or appointed to office by the state or any of its
political subdivisions who waives whatever salary, wage or per
diem compensation he may be entitled to by virtue of service in
such office and who does not receive any income therefrom
except such reimbursement of out-of-pocket costs and expenses
as may be permitted by the statutes governing such office shall
continue to receive an incentive option under this section. Such
service shall not be counted as contributed or credited service
for purposes of computing retirement benefits.

If such elected or appointed office is a part-time elected or
appointed office, a person electing retirement under this section
may serve in such elected or appointed office without a loss of
the benefits provided under this section.

Prior to the initiation or renewal of any contract entered
into pursuant to the provisions of this section or the acceptance
of any elective or appointive office by a person who has elected
to retire under the early retirement provisions of this article, such person shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a, of this code regarding the form and contents of the disclosure and waiver statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive benefits are reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.

In any event, an eligible member may retire under this section and thereafter continue to receive his incentive annuity and be employed as a substitute teacher or as adjunct faculty.

Any such incentive retirants, under this section, may not thereafter receive such annuity and enter or reenter any governmental retirement system established or authorized to be established by the state, notwithstanding any provision of the code to the contrary, unless required by constitutional provision or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, is intended to be paid from the retirement incentive account hereby created as a special account in the state treasury and from the funds therein established with moneys required to be transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of such positions vacated and subsequently canceled under this temporary early retirement program. Salary and fringe benefit moneys actually saved in a particular fiscal year shall constitute the fund source for
payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the teachers retirement system and as a part of the assets thereof. No such additional annuity shall be disallowed even though initial receipts may not be sufficient, with funds of the system to be applied for such purpose, as for the base annuity. With respect to public employer division retirants (nonstate division retirants of the system), such incentive annuity shall be paid from the nonstate division funds of the system.

(d) The executive secretary of the retirement system shall provide forms for applicants. Such forms shall include a detailed description of the incentive plan options.

The executive secretary of the retirement system shall file a report to the Legislature no later than the fifteenth day of February, one thousand nine hundred eighty-nine, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year two thousand.

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member’s retirement. The vacant
position abolition requirement shall not apply to elective
positions or appointed public officers whose positions are
established by state constitutional or statutory provision. The
retirant’s employing entity shall decide as to which of the
vacated positions made available through special early retire-
ment or through regular, voluntary retirement are to be abol-
ished and the head of such spending unit shall immediately
notify the state auditor, the legislative auditor, and the commis-
sioner of the department of finance and administration of the
decisions and shall then apply and/or transfer the remaining
salary and fringe benefits as aforesaid: Provided, That this
vacant position abolition provision shall not apply to any
county or municipal position except those under the authority
of a county board of education, nor to any position or positions,
whether designated by spending unit, department, agency,
commission, entity or otherwise, which the governor in respect
of the executive branch, or the chief justice of the supreme
court of appeals in respect of the judicial branch, or the
president of the Senate or speaker of the House of Delegates, in
respect of the legislative branch, may exempt or amend, under
such abolition provision, upon his respective recommenda-
tion that such exemption or amendment is necessary to provide
for continuity of governmental operation or to preserve the
health, welfare or safety of the people of West Virginia, and
with the prior concurrence of the joint committee on govern-
ment and finance in such recommendation, after the chairmen
thereof shall cause such committee to meet.

(f) *Special rule of eighty.* — Any active, contributing
member of the retirement system as of the first day of April,
one thousand nine hundred eighty-eight, who selects one of the
incentive options in this section, may retire under the special
eyearly retirement provisions with full pension rights, without
reduction of benefits if the sum of such member’s age plus
years of contributing service equals or exceeds eighty: Pro-
vided, That such person has at least twenty years of contributing
service; up to two years of which may be military service, or
prior service, or any combination thereof not exceeding an
aggregate of two years.

(g) **Termination of temporary retirement incentives**

program. — The right to elect, choose, select or use any of the
options, special rule of eighty, or other benefits set forth in this
section shall terminate on the thirtieth day of June, one thou-
sand nine hundred eighty-nine.

(h) The board shall promulgate rules and regulations in
accordance with the provisions of article three, chapter twenty-
nine of this code regarding the calculation of the amount of
incentive option that may be forfeited pursuant to the provisions
of subsection (b) of this section.

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**CHAPTER 253**

(S. B. 552 — By Senators Plymale, Tomblin, Mr. President, Craigo,
Jackson, Prezioso, Bailey, Wooton, Bowman, Kessler, Anderson,
Hunter, Edgell, Helmick, Minard, Sharpe, Ross, Mitchell, Love,
Rowe, Caldwell, Oliverio, McKenzie, Redd and Burnette)

[Passed April 13, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article ten, chapter five of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section twenty-two-g,
relating to the public employees retirement system; providing for
a one-time supplement to the retirement benefit of certain
annuitants; and specifying eligibility criteria and setting amounts
therefor.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22g. One-time supplement for certain annuitants effective July 1, 2001.

(a) A one-time supplement to retirement benefits shall be provided to retirees of this system who have: (i) Reached the specified age threshold; and (ii) have been in retirement status for the specified number of years, as follows:

(1) For retirees who, as of the first day of July, two thousand one, are at least sixty-five years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal five percent of his or her annuity benefit as of the effective date of this section;

(2) For retirees who, as of the first day of July, two thousand one, are at least seventy years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal ten percent of his or her annuity benefit as of the effective date of this section; and

(3) For any person who, as of the first day of July, two thousand one, is at least sixty-five years of age and who retired under the early retirement incentive provided in section twenty-two-c of this article, this one-time supplement shall equal three percent of his or her annuity benefit as of the effective date of this section and subdivisions (1) and (2) of this subsection do not apply.
(b) The one-time supplement provided for in this section applies only to members who have retired prior to or as of the effective date of this section or, if applicable, to beneficiaries receiving benefits under the retirement system prior to or as of the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

CHAPTER 254

(S. B. 559 — By Senators Minear, Unger and Plymale)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section twenty-seven, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preretirement death benefits under the West Virginia public employees retirement system; clarifying that a lump sum refund amount may be paid as a preretirement death benefit in lieu of an annuity; clarifying that no annuity benefit is due if the member has fewer than ten years of service; and providing that a married member who has at least ten years of service is allowed to name a beneficiary other than a spouse to receive preretirement death benefits if a valid waiver is presented to the retirement board.

Be it enacted by the Legislature of West Virginia:
That section twenty-seven, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-27. Preretirement death annuities.

(a) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided for in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.
(b) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies; and (2) leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the said member had: (1) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (2) elected option A provided for in section twenty-four of this article; and (3) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided for in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the retirement board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the retirement board, the member or former member shall nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided for in this section, has been presented to and accepted by the retirement board.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children shall be entitled to an annuity to be calculated as follows: The annuity reserve shall be
calculated as though the member had retired as of the date of
his or her decease and elected a straight life annuity and the
amount of the annuity reserve shall be paid in equal monthly
installments to said the member’s infant child or children until
the child or children attain age twenty-one or sooner marry or
become emancipated; however, in no event shall any child or
children receive more than two hundred fifty dollars per month
each. The annuity payments shall be computed as of the date of
the death of the member and the amount of the annuity shall
remain constant during the period of payment. The annual
amount of the annuities payable by this section shall not exceed
sixty percent of the deceased member’s final average salary.

(d) In the event any member or former member does not
have ten or more years of credited service, no preretirement
death annuity may be authorized, owed or awarded under this
section.

CHAPTER 255
(S. B. 712 — By Senators Plymale, Fanning,
Prezioso, Edgell, McCabe and Sprouse)

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

AN ACT to amend and reenact section forty-eight, article ten, chapter
five of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to West Virginia public employ-
ees retirement system; members’ reemployment after retirement;
and retirement options for holders of elected public office.
Be it enacted by the Legislature of West Virginia:

That section forty-eight, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

1 The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities.

(a) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and/or requires at least one thousand forty hours of service per year in that position; and (2) "temporary full-time employment or temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed.
(b) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of ten thousand dollars.

(c) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, he or she has the option, notwithstanding subsection (b) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office, in addition to the salary he or she may be entitled to as such office holder; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (b) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be reappointed to the same position unless and until a continuous six-month period has passed since his or her retirement from the position.

(d) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the
legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided,* that the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(e) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the state Legislature, the clerk of the House of Delegates and the clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: *Provided,* that the member is eligible to retire under the provisions of section twenty or section twenty-one of this article: *Provided, however,* that the member elects to stop actively contributing to the system while receiving such in-service distributions.

CHAPTER 256

*(Com. Sub. for H. B. 2777 — By Delegates Campbell, J. Smith, Hubbard and Harrison)*

[Passed April 12, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two and twenty-four, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to technical revisions and to clarify retirement membership of a retired deputy sheriff who is later elected sheriff.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

§7-14D-24. Service as sheriff.

§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and one-quarter percent of the member’s final average salary multiplied by the member’s years of credited service. A member’s accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section nine-a of this article.

(b) “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-c, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered employment together with regular interest on the deducted amounts.
(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed one hundred fifty thousand dollars as adjusted for cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first period for which an amount is received as an annuity by reason of retirement. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the later of the last day the member worked in covered employment and the normal retirement age.

(h) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last
twelve months of employment. Until a member has worked twelve months, annualized base salary is used as base salary.

(i) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; or (2) the period of time which active duties are not performed but disability benefits are received under section fourteen or fifteen of this article; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where such secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d of chapter five of this code: Provided, That the deputy sheriff contribute to the fund created in section six of this article the amount specified as the deputy sheriff's contribution in section seven of this article.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:
77  (A) A natural child of the member;

78  (B) A legally adopted child of the member;

79  (C) A child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or

80  (D) A stepchild of the member residing in the member’s household at the time of the member’s death; or

82  (2) Any unmarried child under age twenty-three:

85  (A) Who is enrolled as a full-time student in an accredited college or university;

87  (B) Who was claimed as a dependent by the member for federal income tax purposes at the time of member’s death; and

89  (C) Whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

91  (o) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

94  (p) “Disability service” means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under section fourteen or fifteen of this article.

99  (q) “Early retirement age” means age forty or over and completion of twenty years of service.

101  (r) “Effective date” means the first day of July, one thousand nine hundred ninety-eight.
(s) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under section fourteen or fifteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) "Fund" means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia division of labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission,
irrespective of mitigation of damages. The same hours of
service shall not be credited both under paragraph (1) or (2) of
this subdivision and under this paragraph. Hours under this
paragraph shall be credited to the member for the plan year or
years to which the award or agreement pertains, rather than the
plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as a deputy sheriff
after the effective date of this article, as defined in subsection
(r) of this section, or a deputy sheriff first hired prior to the
effective date and who elects to become a member pursuant to
section five or section seventeen of this article. A member shall
remain a member until the benefits to which he or she is
entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member's
annual compensation which is paid to him or her per month.

(x) "Normal form" means a monthly annuity which is one
twelfth of the amount of the member's accrued benefit which
is payable for the member's life. If the member dies before the
sum of the payments he or she receives equals his or her
accumulated contributions on the annuity starting date, the
named beneficiary shall receive in one lump sum the difference
between the accumulated contributions at the annuity starting
date and the total of the retirement income payments made to
the member.

(y) "Normal retirement age" means the first to occur of the
following:

(1) Attainment of age fifty years and the completion of
twenty or more years of service;

(2) While still in covered employment, attainment of at
least age fifty years and when the sum of current age plus years
of service equals or exceeds seventy years;
(3) While still in covered employment, attainment of at least age sixty years and completion of five years of service; or

(4) Attainment of age sixty-two years and completion of five or more years of service.

(z) “Partially disabled” means a member’s inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) “Public employees retirement system” means the West Virginia public employee’s retirement system created by article ten, chapter five of this code.

(bb) “Plan” means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) “Plan year” means the twelve-month period commencing on the first day of July of any designated year and ending the following thirtieth day of June.

(dd) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.
(ee) "Retirement income payments" means the annual retirement income payments payable under the plan.

(ff) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(gg) "Surviving spouse" means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(hh) "Totally disabled" means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subdivision:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

A member’s receipt of social security disability benefits creates a rebuttable presumption that the member is totally
disabled for purposes of this plan. Substantial gainful employ-
ment rebuts the presumption of total disability.

(ii) “Year of service.” A member shall, except in his or her
first and last years of covered employment, be credited with
year of service credit based upon the hours of service performed
as covered employment and credited to the member during the
plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
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<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
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<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member's first and last years of covered employ-
ment, the member shall be credited with one twelfth of a year
of service for each month during the plan year in which the
member is credited with an hour of service. A member is not
entitled to credit for years of service for any time period during
which he or she received disability payments under section
fourteen or fifteen of this article. Except as specifically
excluded, years of service include covered employment prior to
the effective date.

Years of service which are credited to a member prior to his
or her receipt of accumulated contributions upon termination of
employment pursuant to section thirteen of this article or
section thirty, article ten, chapter five of this code, shall be
disregarded for all purposes under this plan unless the member
repays the accumulated contributions with interest pursuant to
section twelve of this article or had prior to the effective date
made the repayment pursuant to section eighteen, article ten,
chapter five of this code.
(jj) "Required beginning date" means the first day of April of the calendar year following the later of: (i) The calendar year in which the member attains age seventy and one-half; or (ii) the calendar year in which he or she retires or otherwise separates from covered employment.

§7-14D-24. Service as sheriff.

(a) Any active member who after the effective date of this article is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by section seven of this article. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by section seven of this article. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated, and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person, who before the effective date of this article was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least twenty years of credited service under the public employees retirement system, with at least sixteen of those twenty years having been earned as a deputy sheriff, may
elect to become a member of this plan by paying the amounts required by section seven of this article. Upon such election, service shall be transferred from the public employees retirement system pursuant to section eight of this article: Provided, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within ten days of taking office as sheriff or within ten days of the effective date of this provision.

CHAPTER 257

(H. B. 2775 — By Delegates Campbell, J. Smith, Keener, Browning, Hubbard, Hall and Harrison)

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

AN ACT to amend and reenact section nine-b, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-eight-b, article seven-a, chapter eighteen of said code; to amend and reenact section twelve-a, article seven-b of said chapter; and to amend and reenact section twelve-b, article nine, chapter fifty-one of said code, all relating to technical revisions to correct the effective dates specified in said provisions.

Be it enacted by the Legislature of West Virginia:
That section nine-b, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twenty-eight-b, article seven-a, chapter eighteen of said code be amended and reenacted; that section twelve-a, article seven-b of said chapter be amended and reenacted; and that section twelve-b, article nine, chapter fifty-one of said code be amended and reenacted, all to read as follows:

Chapter
  7. County Commissions and Officers.
  18. Education.
  51. Courts and Their Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the plan to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the plan to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not
extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the plan has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the plan shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary, commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.
ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-28b. Federal law minimum required distributions.

1 The requirements of this section apply to any distribution of a member’s or beneficiary’s interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

   (a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

   (b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as
rapidly as under the method of distribution being used at the
date of his or her death.

(c) If a member dies before distribution to him or her has
commenced, then his or her entire interest in the retirement
system shall be distributed by the thirty-first day of December
of the calendar year containing the fifth anniversary of the
member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary,
distributions may be made over the life or over a period certain
not greater than the life expectancy of the beneficiary com-
mencing on or before the thirty-first of December of the
calendar year immediately following the calendar year in which
the member died; or

(2) If the member’s beneficiary is the surviving spouse, the
date distributions are required to begin shall not be earlier than
the later of:

(A) The thirty-first day of December of the calendar year in
which the member would have attained age seventy and one-
half; or

(B) The earlier of: (i) The thirty-first day of December of
the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the
calendar year following the calendar year in which the spouse
died.

ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT
SYSTEM.

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution
of a member’s or beneficiary’s interest and take precedence
over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member’s death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first day of
December of the calendar year immediately following the calendar year in which the participant died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:

(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of (i) The thirty-first day of December of the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

(d) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if such remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-12b. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member’s or beneficiaries interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after the thirty-first day of December, one thousand nine hundred eighty-six. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with Section 401(a)(9) of the Internal
Revenue Code and the regulations thereunder. For this purpose, the following provisions apply:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with treasury regulations prescribed under Section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system shall be distributed by the thirty-first day of December of the calendar year containing the fifth anniversary of the member's death, except as follows:

(1) If a member’s interest is payable to a beneficiary, distributions may be made over the life of that beneficiary or over a period certain not greater than the life expectancy of the beneficiary commencing on or before the thirty-first of December of the calendar year immediately following the calendar year in which the member died; or

(2) If the member’s beneficiary is the surviving spouse, the date distributions are required to begin shall be no later than the later of:
(A) The thirty-first day of December of the calendar year in which the member would have attained age seventy and one-half; or

(B) The earlier of: (i) The thirty-first day of December of the calendar year following the calendar year in which the member died; or (ii) the thirty-first day of December of the calendar year following the calendar year in which the spouse died.

CHAPTER 258

(H. B. 2776 — By Delegates Campbell, J. Smith, Keener, Browning, Hubbard, Hall and Harrison)

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

AN ACT to amend and reenact section twenty-three, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty-four, article seven-a, chapter eighteen of said code, all relating to plan loan programs for the deputy sheriff’s retirement system and the teachers retirement system; incorporating federal tax law provisions; and authorizing the consolidated public retirement board to issue loans and administer the loan programs in compliance with federal law, including the adoption of policies and procedures and taking any action necessary or appropriate to comply with federal tax law or otherwise required by the Internal Revenue Service.

Be it enacted by the Legislature of West Virginia:
That section twenty-three, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-four, article seven-a, chapter eighteen of said code, be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.
18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. WEST VIRGINIA DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-23. Loans to Members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than five hundred dollars nor more than eight thousand dollars:

Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (1) Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans to the member during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the day on which the loan is made; or (2) fifty percent of his or her accumulated contributions. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months.
and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. At the member's option, the monthly loan payment may include a level premium sufficient to provide declining term insurance with the plan as beneficiary to repay the loan in full upon the member's death. If a member declines the insurance and dies before the loan is repaid, the unpaid balance of the loan shall be deducted from the lump sum insurance benefits payable under section twenty-one of this article.

(b) A member with an unpaid loan balance who wishes to retire may have the loan repaid in full by accepting retirement income payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance and then converting the remaining of the reserve to a monthly pension payable in the form of the annuity desired by the member.

(c) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the retirement board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment of principal and accrued interest on a loan remains unpaid after the same become due and payable under the terms of the loan or after such grace period as may be established in the discretion of the
retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of such unpaid loan balance shall be made only at such time as the member is entitled to receive a distribution under the plan.

(d) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the retirement board may determine.

(e) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder. The retirement board is authorized to: (a) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of sections 72(p)(2) and section 401 of the Internal Revenue Code; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, notwithstanding any provision in this article to the contrary.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.
§18-7A-34. Loans to members.

1 A member of the retirement system upon written application may borrow from his or her individual account in the teachers accumulation fund, subject to these restrictions:

2 (1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars: Provided, That the maximum amount of any loan when added to the outstanding balance of all other loans shall not exceed the lesser of the following: (a) Fifty thousand dollars reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the date on which the loan is made, over the outstanding balance of loans to the member on the date on which the loan is made; or (b) fifty percent of the member’s contributions to his or her individual account in the teachers accumulations fund: Provided, however, That if the total amount of loaned money outstanding exceeds forty million dollars, the maximum shall not exceed three thousand dollars until the retirement board determines that loans outstanding have been reduced to an extent that additional loan amounts are again authorized.

3 (2) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the retirement board: Provided, That interest charged shall be commercially reasonable in accordance with the provisions of section 72(p)(2) of the Internal Revenue Code, and the federal regulations issued thereunder. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

4 (3) No member shall be eligible for more than one loan in any one year.
(4) If a refund or benefit is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

(5) From his or her monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in substantially level payments in not more than sixty nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members' contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

(6) The entire unpaid balance of any loan, and interest due thereon, shall, at the option of the retirement board, become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (A) Any payment of principal and accrued interest on a loan remains unpaid after the same becomes due and payable under the terms of the loan or after such grace period as may be established in the discretion of the retirement board; (B) the borrowing member attempts to make an assignment for the benefit of creditors of his or her refund or benefit under the retirement system; or (C) any other event of default set forth in rules promulgated by the retirement board in accordance with the authority granted pursuant to section one, article ten-d, chapter five of this code: Provided, That any refund or offset of an unpaid loan balance shall be made only at the time the member is entitled to receive a distribution under the retirement system.

(7) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default,
prepayment, security, and otherwise as the retirement board may determine.

(8) Notwithstanding anything herein to the contrary, the loan program authorized by this section shall comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, and accordingly, the retirement board is authorized to: (a) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of section 72(p)(2) and section 401 of the Internal Revenue Code and the federal regulations issued thereunder; (b) adopt plan loan policies or procedures consistent with these federal law provisions; and (c) take such actions as it deems necessary or appropriate to administer the plan loan program created hereunder in accordance with these federal law provisions. The retirement board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of section 72(p)(2) or section 401 of the Internal Revenue Code, and the federal regulations issued thereunder, notwithstanding any provision in this article to the contrary.

CHAPTER 259

(H. B. 2778 — By Delegates Hubbard and Harrison)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
thousand nine hundred thirty-one, as amended, relating to the teachers retirement system and providing that the interest rate charged members for repayment of service previously withdrawn shall be as set by the consolidated public retirement board in legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

§18-7A-17. Statement and computation of teachers’ service; qualified military service.

§18-7A-13. Membership in retirement system; cessation of membership; reinstatement of withdrawn service.

The membership of the retirement system shall consist of the following:

(a) New entrants, whose membership in the system is compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge’s retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter. The membership of any person in the retirement system ceases:
(1) Upon the withdrawal of accumulated contributions after the cessation of service; or (2) upon retirement; or (3) at death; or (4) if service amounts to fewer than five years in any period of ten consecutive years.

(c) Any former member of the retirement system who has withdrawn accumulated contributions but subsequently reenters the retirement system may repay to the retirement fund the amount withdrawn, plus interest at a rate set by the board, compounded annually from the date of withdrawal to the date of repayment: Provided, That no repayment may be made until the former member has completed two years of contributory service after reentry; and the member shall be accorded all the rights to prior service and experience as were held at the time of withdrawal of the accumulated contributions: Provided, however, That no withdrawn service may be reinstated that has been transferred to another retirement system from which the member is currently or will in the future draw benefits based on the same service. The interest paid shall be deposited in the reserve fund.

(d) No member is eligible for prior service credit unless he or she is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this subdivision shall be considered eligible for prior service pension upon retirement.

(e) Any individual who is a leased employee is not eligible to participate in the system. For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.
§18-7A-17. Statement and computation of teachers' service; qualified military service.

(a) Under rules adopted by the retirement board, each teacher shall file a detailed statement of his or her length of service as a teacher for which he or she claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing the service, however, it shall credit no period of more than a month’s duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

(b) For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, “armed forces” includes women’s army corps, women’s appointed volunteers for emergency service, army nurse corps, spars, women’s reserve and other similar units officially parts of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, “qualified military service” has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is

*Clerk’s Note: This section was also amended by H. B. 2080 (Chapter 250), which passed subsequent to this act.
authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

(c) For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of that state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he or she contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service credit granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for the transferred service as additional service only: Provided, however, That a transfer of out-of-state service is prohibited if the service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement system shall not be used to compute the average final salary of the member under the retirement system.

(d) Service credit for members or retired members shall not be denied on the basis of minimum income rules promulgated by the teachers retirement board: Provided, That the member or retired member shall pay to the system the amount he or she would have contributed during the year or years of public school service for which credit was denied as a result of the minimum income rules of the teachers retirement board.
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(e) No members shall be considered absent from service while serving as a member or employee of the Legislature of the state of West Virginia during any duly constituted session of that body or while serving as an elected member of a county commission during any duly constituted session of that body.

(f) No member shall be considered absent from service as a teacher while serving as an officer with a statewide professional teaching association, or who has served in that capacity, and no retired teacher, who served in that capacity while a member, shall be considered to have been absent from service as a teacher by reason of that service: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any absence, in an amount double the amount which he or she would have contributed in his or her regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system and: (1) Shall require the transfer of the member's contributions to the teachers retirement system; or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which is sufficient to equal the contributions he or she would have made had the member been under the teachers retirement system during the period of his or her membership in the public employees retirement system plus interest compounded
annually from the date of withdrawal to the date of payment at a rate set by the board. The interest paid shall be deposited in the reserve fund.

(g) For service as a teacher in an elementary or secondary parochial school, located within this state and fully accredited by the West Virginia department of education, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. The interest shall be deposited in the reserve fund and service granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in the West Virginia public school system. Any transfer of parochial school service, as provided in this section, may not be used to establish eligibility for a retirement allowance and the board shall grant credit for the transfer as additional service only: Provided, however, That a transfer of parochial school service is prohibited if the service is used to obtain a retirement benefit from another retirement system.

(h) If a member is not eligible for prior service credit or pension as provided in this article, then his or her prior service shall not be considered a part of his or her total service.

(i) A member who withdrew from membership may regain his or her former membership rights as specified in section thirteen of this article only in case he or she has served two years since his or her last withdrawal.

(j) Subject to the provisions of subsections (a) through (i), inclusive, of this section, the board shall verify as soon as practicable the statements of service submitted. The retirement
board shall issue prior service certificates to all persons eligible for the certificates under the provisions of this article. The certificates shall state the length of the prior service credit, but in no case shall the prior service credit exceed forty years.

Notwithstanding any provision of this article to the contrary, when a member is or has been elected to serve as a member of the Legislature, and the proper discharge of his or her duties of public office require that member to be absent from his or her teaching or administrative duties, the time served in discharge of his or her duties of the legislative office are credited as time served for purposes of computing service credit: Provided, That the board may not require any additional contributions from that member in order for the board to credit him or her with the contributing service credit earned while discharging official legislative duties: Provided, however, That nothing in this section may be construed to relieve the employer from making the employer contribution at the member's regular salary rate or rate of pay from that employer on the contributing service credit earned while the member is discharging his or her official legislative duties. These employer payments shall commence as of the first day of June, two thousand: Provided further, That any member to which the provisions of this subsection apply may elect to pay to the board an amount equal to what his or her contribution would have been for those periods of time he or she was serving in the Legislature. The periods of time upon which the member paid his or her contribution shall then be included for purposes of determining his or her final average salary as well as for determining years of service: And provided further, That a member utilizing the provisions of this subsection is not required to pay interest on any contributions he or she may decide to make.
AN ACT to amend and reenact section seven, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the rights of members who left employment under the teachers retirement system before the effective date of the teachers' defined contribution plan; and providing an option for such members to irrevocably reenter the teachers retirement system upon reemployment.

Be it enacted by the Legislature of West Virginia:

That section seven, 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. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.

1 (a) Beginning the first day of July, one thousand nine hundred ninety-one, and except as provided for in this section, the teachers' defined contribution system shall be the single retirement program for all new employees whose employment
commences on or after that date. No additional new employees except as may be provided for in this section may be admitted to the existing teachers retirement system.

(b) Members of the existing teachers retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, and those whose employment was terminated after the thirtieth day of June, one thousand nine hundred ninety-one, under a reduction in force are not affected by subsection (a) of this section and shall continue to contribute to and participate in the existing teachers retirement system without a change in plan provisions or benefits.

(c) Any person who was previously a member of the teachers retirement system and who left participating employment before the creation of the defined contribution system on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after the effective date of this section has the right to elect to return to the existing teachers retirement system or to elect to participate in the defined contribution system. The election shall be made at the time of his or her reemployment, is irrevocable and shall be made upon forms approved by and filed with the West Virginia consolidated public retirement board.

(d) Any person who was, prior to the first day of July, one thousand nine hundred ninety-one, a member of the existing teachers retirement system who left participating employment before the creation of the teachers' defined contribution system on the first day of July, one thousand nine hundred ninety-one, and who later returned to participating employment after that date and who was precluded from returning to the existing teachers retirement system as a result of prior provisions of this section, may elect, pursuant to the provisions of this section, readmission to the existing teachers retirement system: Pro-
That persons who are eligible to, and who make the
election to, terminate their participation in the defined contribu-
tion system and to return to participation in the existing
teachers retirement system as provided for in this section shall
make the election, on a form approved by and filed with the
West Virginia consolidated public retirement board on or before
the thirtieth day of June, two thousand two: *Provided, however,*
That as a condition of the right of readmission to the existing
teachers retirement system, persons making the election
provided for in this section whose defined contribution account
had not, prior to such election, been divided by a qualified
domestic relations order, shall pay an additional contribution to
the existing teachers retirement system equal to one and one-
half percent of his or her annual gross compensation earned for
each year during which he or she participated in the defined
contribution system and shall consent and agree to the transfer
of his or her total account balance in the defined contribution
system as of the most recent plan valuation immediately
preceding his or her transfer to the existing teachers retirement
system. For persons making the election provided for in this
section whose defined contribution account had, prior to such
election, previously been divided by a qualified domestic
relations order, the cost to such person to transfer to the existing
teachers retirement system shall be actuarially determined by
the consolidated public retirement board. Upon verification of
that person’s eligibility to return to participation in the existing
teachers retirement system and the tender and transfer of funds
as provided for in this subsection, persons making this election
shall receive service credit for the time the member participated
in the defined contribution system as if his or her participation
had been in the existing teachers retirement system: *Provided
further,* That the right to terminate participation in the defined
contribution system and to resume participation in the existing
teachers retirement system as provided for in this section is
irrevocable and shall not apply to any person who, while
members of the teachers retirement system, voluntarily elected
to terminate his or her membership in the teachers retirement
system and to become a participant in the defined contribution
system pursuant to section eight of this article.

(e) Any employee whose employment with an employer
was suspended or terminated while he or she served as an
officer with a statewide professional teaching association is
eligible for readmission to the existing retirement system in
which he or she was a member.

(f) An employee whose employment with an employer or
an existing employer is suspended as a result of an approved
leave of absence, approved maternity or paternity break in
service or any other approved break in service authorized by the
board is eligible for readmission to the existing retirement
system in which he or she was a member.

(g) In all cases in which a question exists as to the right of
an employee to readmission to membership in the existing
teachers retirement system, the consolidated public retirement
board shall decide the question.

(h) Any individual who is not a "member" or "employee"
as defined by section two of this article and any individual who
is a leased employee is not eligible to participate in the teach-
ers' defined contribution system. For purposes of this section,
a "leased" employee means any individual who performs
services as an independent contractor or pursuant to an agree-
ment with an employee leasing organization or other similar
organization. In all cases in which a question exists as to
whether an individual is eligible for membership in this system,
the consolidated public retirement board shall decide the
question.
AN ACT to amend and reenact section eleven, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of continuous or multiple trip permits for the transport of oversize and overweight loads on state highways.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

(a) The commissioner of highways may, in his or her discretion, upon application in writing and good cause being shown therefor issue a special permit in writing authorizing: (1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation be continuous or not, provided the applicant shall agree to compensate the commissioner of highways for all damages or expenses incurred in connection
with the crossing; (2) the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and (3) the applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that: (A) The container be hauled only on the roadways and highways designated by the commissioner of highways; (B) the contents of the container are not changed from the time it is loaded by the consignor or the consignor’s agent to the time it is delivered to the consignee or the consignee’s agent; and (C) any additional conditions as the commissioner may impose to otherwise ensure compliance with the provisions of this chapter.

(b)(1) The commissioner may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the commissioner upon such terms and restrictions as the commissioner may prescribe.

(2) For purposes of this section, nondivisible load means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would: (A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended; (B) destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or (C) require more than eight workhours to dismantle using appropriate equipment: Provided,
That the applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(c) The application for any permit other than a special annual permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(d) The commissioner of highways is authorized to issue or withhold a permit at his or her discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond or other security as may be considered necessary to compensate for any injury to any roadway structure and to specify the type, number and the location for escort vehicles for any vehicle.

The commissioner may charge a fee not to exceed five dollars for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.

(e) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the commissioner of highways granting the permit, and no person shall violate any of the terms or conditions of the special permit.
CHAPTER 262

(Com. Sub. for H. B. 2912 — 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 sections two, three, four, five, six, seven and eight, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article sixteen, chapter five of said code; to amend and reenact section three, article one, chapter five-f of said code; to amend and reenact sections two and two-a, article seven, chapter six of said code; to amend and reenact section six, article four, chapter seven of said code; to amend and reenact section thirteen, article one, chapter ten of said code; to amend and reenact section one, article one, chapter eleven of said code; to amend and reenact section five, article twenty-nine-b, chapter sixteen of said code; to amend and reenact section four, article twenty-three, chapter nineteen of said code; to amend and reenact section five, article two, chapter twenty-one-a of said code; to amend and reenact section six, article one, chapter twenty-two of said code; to amend and reenact section seven, article one, chapter twenty-two-a of said code; to amend and reenact section four, article one, chapter twenty-two-c of said code; to amend and reenact section three, article one, chapter twenty-four of said code; and to amend and reenact section four, article twenty, chapter thirty-one of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:
That sections two, three, four, five, six, seven and eight, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article sixteen, chapter five of said code be amended and reenacted; that section three, article one, chapter five-f of said code be amended and reenacted; that sections two and two-a, article seven, chapter six of said code be amended and reenacted; that section six, article four, chapter seven of said code be amended and reenacted; that section thirteen, article one, chapter ten of said code be amended and reenacted; that section one, article one, chapter eleven of said code be amended and reenacted; that section five, article twenty-nine-b, chapter sixteen of said code be amended and reenacted; that section four, article twenty-three, chapter nineteen of said code be amended and reenacted; that section five, article two, chapter twenty-one-a of said code be amended and reenacted; that section six, article one, chapter twenty-two of said code be amended and reenacted; that section three, article one, chapter twenty-two-a of said code be amended and reenacted; that section four, article one, chapter twenty-two-c of said code be amended and reenacted; that section three, article one, chapter twenty-four of said code be amended and reenacted; and that section four, article twenty, chapter thirty-one 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.

5F. Reorganization of the Executive Branch of State Government.


7. County Commissions and Officers.

10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.
§4-2A-2. Basic compensation for services; proration.
§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.
§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.
§4-2A-5. Interim compensation for members.
§4-2A-6. Travel expenses.
§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

§4-2A-2. Basic compensation for services; proration.

1 (a) Each member of the Legislature shall receive as basic compensation for his or her services the sum of fifteen thousand dollars per calendar year. In addition to the basic compensation, members shall receive the additional compensations as are expressly provided for in sections three, four and five of this article. Except for the increased basic compensation set forth in this subsection, all other increased amounts or new amounts in
respect to the compensation or expenses of members of the
Legislature, set forth in the resolution of the citizens legislative
compensation commission, dated the eighth day of January, one
thousand nine hundred ninety-nine, and implemented in
sections two through eight of this article providing for new
amounts or amounts increased to new amounts greater than
those in force and effect on the first day of January, two
thousand, shall all become effective for calendar year two
thousand one, and each calendar year thereafter as prescribed in
this section.

(b) The basic compensation shall be payable twice a month
during each regular session of the Legislature, without regard
to any extension of the regular session. In the event of the
death, resignation or removal of a member of the Legislature
during a regular session of the Legislature and the appointment
and qualification of his or her successor during any regular
session, the basic compensation provided for in this section
shall be prorated between the original member and his or her
successor on the basis of the number of days served (including
Saturdays and Sundays) as a member of the Legislature by each
during the regular session of sixty calendar days.

(c) In the event of the death, resignation or removal of a
member of the Legislature and the appointment and qualifica-
tion of his or her successor subsequent to the regular session of
the Legislature held in the calendar year in which such succes-
sor was appointed and qualified, none of the basic compensa-
tion provided for in this section shall be paid to such successor.

§4-2A-3. Compensation for members of the Legislature during
any extension of regular session or during extraordi-
nary session.

Each member of the Legislature shall receive, in addition
to the basic compensation provided for in section two of this
3 article, additional compensation of one hundred fifty dollars per
day for each day of attendance in person upon any business of
the Senate or House of Delegates, as the case may be, on each
day upon which the Senate or House of Delegates is actually
called to order during each extension of regular session or
during extraordinary session of the Legislature. The additional
compensation shall be paid from time to time during any
extended session or extraordinary session, as prescribed by
rules established by the legislative auditor.

§4-2A-4. Additional compensation for president of Senate,
speaker of House of Delegates, majority leaders,
minority leaders, certain committee chairs and
selected members of both houses.

(a) In addition to the basic and additional compensation
provided for in sections two and three of this article, the
president of the Senate and the speaker of the House of
Delegates shall each receive additional compensation of:

(1) Fifty dollars per day for each day actually served during
any regular, extension of regular or extraordinary session as
presiding officer, including Saturdays and Sundays; and

(2) One hundred fifty dollars per day up to a maximum of
eighty days per calendar year for attending to legislative
business in their offices in the capitol building when the
Legislature is not in regular, extension of regular or extraordi-
nary session and interim committees are not meeting.

(b) In addition to the basic and additional compensation
provided for in sections two and three of this article, the
majority leaders and minority leaders of the Senate and of the
House of Delegates shall each receive additional compensation
of twenty-five dollars per day for each day actually served
during any regular, extension of regular or during extraordinary
session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) The presiding officer and majority and minority leader compensation shall be paid from time to time during any such session or interim period, as the case may be, as may be prescribed by rules established by the legislative auditor.

(d) In addition to the basic and additional compensation provided for in sections two and three of this article, the chairpersons of the committees on finance and committees on the judiciary of the respective houses and up to four additional persons from each house, to be named by the presiding officer, shall each receive an additional compensation of one hundred fifty dollars per day up to a maximum of thirty days for attending to legislative business in their offices in the capitol building when the Legislature is not in regular, extended or extraordinary session and interim committees are not meeting.

§4-2A-5. Interim compensation for members.

(a) In addition to the basic and any additional compensation provided for in sections two, three and four of this article, each member shall receive interim compensation of one hundred fifty dollars per day for each day actually engaged in the performance of interim duties as a member of any interim committee between regular sessions of the Legislature: Provided, That the total additional interim compensation payable to any member and his or her replacement, if any, on a committee or commission under the provisions of this subsection shall not exceed the sum of four thousand five hundred dollars per calendar year.

(b) In addition to the basic and any additional compensation provided for in sections two, three and four of this article and subsection (a) of this section, each member shall receive interim compensation of one hundred fifty dollars per day for
16 each day actually engaged in the performance of legislative
duties at a meeting of any statutorily created legislative
committee which meets between regular sessions of the
Legislature and outside of regular interim meetings when
authorized by the committee cochairs and approved by the
president of the Senate and the speaker of the House of
Delegates, not to exceed fifteen days per calendar year.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

(a) Each member of the Legislature is entitled to be
reimbursed, upon submission of an expense voucher, for
expenses incurred incident to travel in the performance of his
or her duties as a member of the Legislature or any committee
of the Legislature, whether the committee is operating under
general law or resolution, including, but not limited to, attend-
dance at party caucuses held in advance of the date of the
assembly of the Legislature in regular session in odd-numbered
years for the purpose of selecting candidates for officers of the
two houses, at a rate equal to that paid by the travel manage-
ment office of the department of administration for the most
direct usually traveled route, if travel is by private automobile,
or for actual transportation costs for direct route travel, if travel
is by public carrier, or for any combination of those means of
transportation actually used, plus the cost of necessary taxi or
limousine service, tolls and parking fees in connection with the
travel, but during any regular, extension of regular or extraordi-
nary session, travel expenses shall not be paid to any member
for more than one round trip to and from the seat of government
and to and from his or her place of residence for each week of
the session.

(b) In addition to the travel expense in subsection (a) of this
section, the president of the Senate and the speaker of the
House of Delegates are entitled to be reimbursed as provided in subsection (a) of this section, upon submission of an expense voucher, for expenses incurred incident to travel for up to a maximum of eighty days per calendar year in connection with their visits to the capitol building for business which is related to their duties as presiding officers of the respective houses of the Legislature, but which takes place when the Legislature is not in regular, extension of regular or extraordinary session and interim committees are not meeting.

(c) The rate paid for mileage pursuant to this section may change from time to time in accordance with changes in the reimbursement rates established by the travel management office of the department of administration, or its successor agency.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

(a) Each member of the Legislature who does not commute daily shall receive the sum of one hundred fifteen dollars per day as per diem allowance in connection with any regular, extended, extraordinary session, interim assignment or for any member authorized by the presiding officer. Any member of the Legislature who does commute daily shall receive the sum of fifty-five dollars per day as the per diem allowance and, in addition to the allowance, shall be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the department of administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of the means of transportation actually used, plus the costs of necessary taxi or limousine service, tolls and parking fees in connection with the travel: Provided, That the total of this per diem allowance plus travel expense for a daily
(b) The president of the Senate and the speaker of the House of Delegates, the chairman of the house committee on finance, the chairman of the senate committee on finance, the chairman of the house committee on the judiciary, the chairman of the senate committee on the judiciary, and up to four additional persons from each house designated by the presiding officer pursuant to section four of this article, shall be reimbursed for travel at the rate established in subsection (a) of this section, and shall further receive the per diem allowance established in the subsection in connection with their visits to the capitol for business which is related to their duties as officers at the times when the Legislature is not in regular, extended or extraordinary session, and interim committees are not meeting.


In addition to reimbursement for travel expenses as authorized in section six of this article, each member of the Legislature traveling from West Virginia to an out-of-state point or points and returning incident to the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether the committee is operating under general law or resolution, where the travel has been duly authorized, is entitled to be reimbursed, upon submission of an expense voucher for the travel, for all reasonable and necessary expenses actually incurred incident to the travel, but the total of any and all reimbursed expenses, exclusive of reimbursement for travel expenses, shall not under any circumstances exceed the actual cost of housing at the least expensive available single
rate and meal and miscellaneous expenses of fifty-five dollars per day. A receipt for the amount paid for housing and for travel by any public transportation to and from West Virginia shall be submitted with the expense voucher, but a receipt is not required to be submitted with any expense voucher for meal and miscellaneous expenses.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

(a) The public employees insurance agency is continued, and consists of the director, the finance board, the advisory board and any employees who may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees that are required for the proper administration of the insurance programs provided for in this article. The director...

*Clerk's Note: This section was also amended by H. B. 2525 (Chapter 240), which passed prior to this act.
shall perform the duties that are required of him or her under the provisions of this article and is the chief administrative officer of the public employees insurance agency. The director may employ a deputy director.

(b) All positions in the agency, except for the director, his or her personal secretary, the deputy director and the chief financial officer shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included in this subsection as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if the person had been in the classified service when severed, removed or terminated.

(c) The director is responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage
options or cost containment incentives, pursuit of coordination
of benefits and subrogation, or any other actions which would
serve to implement the plan or plans designed by the finance
board.

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

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3. Oath; bond; compensation.

(a) Each person appointed to serve as a secretary shall take
the oath or affirmation prescribed by section five, article four
of the constitution, and the oath shall be certified by the person
who administers the same and filed in the office of the secretary
of state.

(b) Each person appointed shall give bond in the penalty of
twenty-five thousand dollars conditioned for the faithful
performance of the duties of the office. The bond shall be
approved by the attorney general as to form and by the governor
as to sufficiency. The surety of the bond may be a bonding or
surety company, in which case the premium shall be paid out of
the appropriation made for the administration of the depart-
ment.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.
ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.
§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

(a) The salaries for each of the state constitutional officers are as follows:

1. The salary of the governor is ninety thousand dollars per year;
2. The salary of the attorney general is seventy-five thousand dollars per year;
3. The salary of the auditor is seventy thousand dollars per year;
4. The salary of the secretary of state is sixty-five thousand dollars per year;
5. The salary of the commissioner of agriculture is seventy thousand dollars per year; and
6. The salary of the state treasurer is seventy thousand dollars per year.

(b) Beginning in the calendar year two thousand five, and for each calendar year thereafter, salaries for each of the state constitutional officers shall be as follows:

1. The salary of the governor shall be ninety-five thousand dollars per year;
2. The salary of the attorney general shall be eighty thousand dollars per year;
(3) The salary of the auditor shall be seventy-five thousand dollars per year;

(4) The salary of the secretary of state shall be seventy thousand dollars per year;

(5) The salary of the commissioner of agriculture shall be seventy-five thousand dollars per year; and

(6) The salary of the state treasurer shall be seventy-five thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand one, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand one, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:
Administrator, division of highways, ninety thousand dollars; administrator, state tax division, sixty-five thousand dollars; administrator, division of corrections, seventy-five thousand dollars; administrator, division of natural resources, seventy thousand dollars; superintendent, state police, seventy-five thousand dollars; administrator, lottery division, seventy-five thousand dollars; director, public employees insurance agency, seventy-five thousand dollars; administrator, division of banking, sixty thousand dollars; administrator, division of insurance, sixty thousand dollars; administrator, division of culture and history, fifty-five thousand dollars; administrator, alcohol beverage control commission, seventy thousand dollars; administrator, division of motor vehicles, seventy thousand dollars; director, division of personnel, fifty-five thousand dollars; adjutant general, seventy-five thousand dollars; chairman, health care authority, seventy thousand dollars; members, health care authority, sixty thousand dollars; director, human rights commission, forty-five thousand dollars; administrator, division of labor, sixty thousand dollars; administrator, division of veterans affairs, forty-five thousand dollars; administrator, division of emergency services, forty-five thousand dollars; members, board of parole, forty-five thousand dollars; members, employment security review board, seventeen thousand dollars; members, workers’ compensation appeal board, seventeen thousand eight hundred dollars; administrator, bureau of employment programs, seventy thousand dollars; administrator, bureau of commerce, seventy thousand dollars; administrator, bureau of environment, seventy thousand dollars; director, office of miner’s health, safety and training, sixty-five thousand dollars. Secretaries of the departments shall be paid an annual salary as follows: Health and human resources, ninety thousand dollars; transportation, seventy-five thousand dollars; tax and revenue, seventy-five thousand dollars; military affairs and public safety, seventy-five thousand dollars; administration, seventy-five thousand dollars; education and the arts, seventy-
five thousand dollars; environmental protection, seventy-five thousand dollars.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and, prior to the first day of July, two thousand one, each of the state officers named in this subsection shall continue to receive the annual salaries he or she was receiving as of the effective date of the enactment of this section in two thousand one, and shall thereafter, notwithstanding any other provision of this code to the contrary, be paid an annual salary as follows:

Administrator, division of risk and insurance management, fifty-five thousand dollars; director, division of rehabilitation services, sixty thousand dollars; executive director, educational broadcasting authority, sixty thousand dollars; secretary, library commission, sixty-seven thousand dollars; director, geological and economic survey, fifty-two thousand five hundred dollars; executive director, prosecuting attorneys institute, sixty thousand dollars; executive director, public defender services, sixty thousand dollars; commissioner, bureau of senior services, seventy thousand dollars; director, state rail authority, fifty-five thousand dollars; executive secretary, women's commission, thirty-one thousand dollars; director, hospital finance authority, twenty-six thousand dollars; member, racing commission, five thousand dollars; chairman, public service commission, seventy thousand dollars; members, public service commission, seventy thousand dollars.

(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the state auditor and the legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The attorney
general shall prepare and distribute the form to the affected spending units.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

*§7-4-6. West Virginia prosecuting attorneys institute.

(a) There is continued the West Virginia prosecuting attorneys institute, a public body whose membership shall consist of the fifty-five elected county prosecuting attorneys in the state. The institute shall meet at least once each calendar year and the presence of twenty-eight of the fifty-five prosecutors at any meeting constitutes a quorum for the conduct of the institute's business.

(b) There is continued the executive council of the West Virginia prosecuting attorneys institute which shall consist of five prosecuting attorneys elected by the membership of the West Virginia prosecuting attorneys institute at its annual meeting and two persons appointed annually by the county commissioner's association of West Virginia. The executive council shall elect one member of the council to serve as chairman of the institute for a term of one year without compensation. The executive council shall serve as the regular executive body of the institute.

(c) There is continued the position of executive director of the West Virginia prosecuting attorneys institute to be employed by the executive council of the institute. The executive director of the West Virginia prosecuting attorneys institute shall serve at the will and pleasure of the executive council of the institute. The executive director shall be licensed to practice law in the state of West Virginia and shall devote full time to

*Clerk's Note: This section was also amended by H. B. 2958 (Chapter 239), which passed prior to this act.
(d) The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, shall include the following:

(1) The provision for special prosecuting attorneys to pursue a criminal matter in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys and their professional staffs;

(3) The provision of materials for prosecuting attorneys and their professional staffs, including legal research, technical assistance and technical and professional publications;

(4) The compilation and dissemination of information on behalf of prosecuting attorneys and their professional staffs on current developments and changes in the law and the administration of criminal justice;

(5) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) The acceptance and expenditure of, grants and gifts and acceptance of services from any public or private source;

(7) The entering into of agreements and contracts with public or private agencies or educational institutions;
(8) The identification of experts and other resources for use by prosecutors in criminal matters;

(9) The recommendation to the Legislature or the supreme court of appeals of the state of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties of the state; and

(10) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate.

(e) Each prosecuting attorney is subject to appointment by the institute to serve as a special prosecuting attorney in any county where the prosecutor for that county or his or her office has been disqualified from participating in a particular criminal case. The circuit judge of any county of this state, who disqualifies the prosecutor or his or her office from participating in a particular criminal case in that county, shall seek the appointment by the institute of a special prosecuting attorney to substitute for the disqualified prosecutor. The executive director of the institute shall, upon written request to the institute by any circuit judge as a result of disqualification of the prosecutor or for other good cause shown, and upon approval of the executive council, appoint a prosecuting attorney to serve as a special prosecuting attorney. The special prosecuting attorney appointed shall serve without any further compensation other than that paid to him or her by his or her county, except that he or she is entitled to be reimbursed for his or her legitimate expenses associated with travel, mileage and room and board from the county to which he or she is appointed as a prosecutor. The county commission in which county he or she is special prosecutor is responsible for all expenses associated with the
prosecution of the criminal action. No person who is serving as
a prosecuting attorney or assistant prosecuting attorney of any
county is required to take an additional oath when appointed to
serve as a special prosecuting attorney.

(f) The executive director of the institute shall maintain an
appointment list that shall include the names of all fifty-five
prosecuting attorneys and that shall also include the names of
any assistant prosecuting attorney who wishes to serve as a
special prosecuting attorney upon the same terms and condi-
tions as set forth in this section. The executive director of the
institute, with the approval of the executive council, shall
appoint special prosecuting attorneys from the appointment list
for any particular matter giving due consideration to the
proximity of the proposed special prosecuting attorney’s home
county to the county requesting a special prosecutor and giving
due consideration to the expertise of the special prosecuting
attorney.

(g) Each county commission shall pay, on a monthly basis,
a special prosecution premium to the treasurer of the state for the
funding of the West Virginia prosecuting attorneys institute. The
monthly premiums shall be paid according to the following
schedule:

| MONTHLY PREMIUMS |
| Assessed Valuation of Property |
| of All Classes in the County |
| Category | Minimum | Maximum | Premium |
| A | $1,500,000,000 | Unlimited | $400 |
| B | $1,000,000,000 | $1,499,999,000 | $375 |
| C | $800,000,000 | $999,999,000 | $350 |
Upon receipt of a premium, grant, reimbursement or other funding source, excluding federal funds as provided in article two, chapter four of this code, the treasurer shall deposit the funds into a special revenue fund to be known as the "West Virginia prosecuting attorneys institute fund". All costs of operating the West Virginia prosecuting attorneys institute shall be paid from the West Virginia prosecuting attorneys institute fund upon proper authorization by the executive council or by the executive director of the institute and subject to annual appropriation by the Legislature of the amounts contained within the fund.

(h) The West Virginia prosecuting attorneys institute shall continue to exist until the first day of July, two thousand five, unless continued by an act of the Legislature. The institute shall annually by the first day of the regular legislative session provide the joint committee on government and finance with a report setting forth the activities of the institute and suggestions for legislative action.

(i) Neither the institute nor its employees acting in their employment capacity shall engage in activities before governmental bodies which advocate positions on issues other than
thos issues consistent with the duties of the institute set forth in subsection (d) of this section.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 1. PUBLIC LIBRARIES.


(a) The officers of the commission are a chairman, elected from the members of the commission, for a term of one year, and a secretary, who shall be a person trained in modern library methods, not a member of the commission. The secretary shall be appointed by the commission and shall serve at the will of the commission. The commission may establish headquarters or maintain its office at any point in the state determines.

(b) The secretary shall keep a record of the proceedings of the commission, have charge of its work in organizing new libraries and improving those already established, supervise the work of the traveling libraries, and in general perform such duties as may from time to time be assigned to him or her by the commission.

CHAPTER 11. TAXATION.

ARTICLE 1. SUPERVISION.

§11-1-1. Office of tax commissioner continued and designated the state tax division; appointment, term, oath and bond of commissioner; powers and duties generally; sections of division; assistant tax commissioner; assistant attorneys general to assist commissioner.
(a) The office of the tax commissioner is continued in all respects as previously constituted in the state government, but is hereby designated as the state tax division of the department of tax and revenue.

(b) The tax commissioner is the chief executive officer of the state tax division and shall be appointed by the governor, by and with the advice and consent of the Senate, to serve at the will and pleasure of the governor for the term for which the governor was elected and until a successor has been appointed and has qualified.

(c) The tax commissioner, before entering upon the duties of office, shall take the oath or affirmation prescribed by section 5, article IV of the constitution. The tax commissioner shall give bond with good security, to be approved by the governor, in the penalty of fifteen thousand dollars. The tax commissioner shall be repaid his or her actual disbursements for traveling expenses. The tax commissioner shall be provided with an office in the capitol and with furniture, office equipment and any necessary clerical assistance.

(d) The tax commissioner has control and supervision of the state tax division and is responsible for the work of each of its sections or other subunits. Each section or bureau shall be headed by a director appointed by the tax commissioner and who is responsible to the tax commissioner for the work of his or her section or bureau. The tax commissioner may create any sections or bureaus and employ any necessary staff or employees to administer the state tax laws for which the tax commissioner or tax division is responsible, within the amount of expenditures appropriated for operation of the tax division by the Legislature. The tax commissioner has authority to appoint an assistant tax commissioner who shall be his or her principal assistant. The powers and duties vested in the tax commissioner by this chapter and any other provisions of law may be dele-
gated by the tax commissioner to the assistant or other employ-
ees, but the tax commissioner is responsible for all official acts
of his or her delegates.

(e) The tax commissioner, if he or she considers the action
necessary, may request the attorney general to appoint assistant
attorneys general who shall perform duties as required by the
tax commissioner. The attorney general, in pursuance of the
request, may select and appoint assistant attorneys general, with
the consent of the tax commissioner, to serve during the will
and pleasure of the attorney general, and the assistants shall be
paid out of any funds made available for that purpose by the
Legislature to the state tax division.

CHAPTER 16. PUBLIC HEALTH.
ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-5. West Virginia health care authority; composition of
the board; qualifications; terms; oath; expenses of
members; vacancies; appointment of chairman,
and meetings of the board.

The "West Virginia Health Care Cost Review Authority" is
continued as an autonomous division of the department of
health and human resources and shall be known as the "West
Virginia Health Care Authority", hereinafter referred to as the
board. Any references in this code to the West Virginia health
care cost review authority means the West Virginia health care
authority.

(a) The board shall consist of three members, appointed by
the governor, with the advice and consent of the Senate. The
board members shall be citizens and residents of this state. No
more than two of the board members may be members of the
same political party. One board member shall have a back-
ground in health care finance or economics, one board member
shall have previous employment experience in human services, business administration or substantially related fields and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(b) Each board member shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of the state of West Virginia, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the board members to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the board. The governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. Appointments are for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only.

(c) No person while in the employ of, or holding any official relation to, any hospital or health care provider subject to the provisions of this article, or who has any pecuniary interest in any hospital or health care provider, may serve as a member of the board or as an employee of the board. Nor may any board member be a candidate for or hold public office or be a member of any political committee while acting as a board member; nor may any board member or employee of the board receive anything of value, either directly or indirectly, from any third-party payor or health care provider. If any of the board members become a candidate for any public office or for membership on any political committee, the governor shall remove the board member from the board and shall appoint a new board member to fill the vacancy created. No board member or former board member may accept employment with any hospital or health care provider subject to the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter six-b of this code: Provided, That the act
48 shall not apply to employment accepted after termination of the
49 board.

50 (d) The concurrent judgment of two of the board members
51 when in session as the board shall be considered the action of
52 the board. A vacancy in the board shall not affect the right or
53 duty of the remaining board members to function as a board.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-4. West Virginia racing commission continued as a public
corporation; composition; terms; vacancies; qualifications, expenses of members; principal office;
meetings; election of officers; quorum; inspection of records; annual report.

1 (a) The “West Virginia racing commission,” is continued in
2 existence as a public corporation and, as such, may contract and
3 be contracted with, plead and be impleaded, sue and be sued
4 and have and use a common seal.

5 (b) The racing commission shall consist of three members,
6 not more than two of whom shall belong to the same political
7 party, to be appointed by the governor by and with the advice
8 and consent of the Senate. The term of office for the members
9 of the racing commission is four years, and until their succes-
10 sors have been appointed and have qualified, and members of
11 the racing commission may serve any number of successive
12 terms. The members of the racing commission in office on the
effective date of the amendment and reenactment of this section
in two thousand one shall, unless removed by the governor after
the effective date of this article, continue to serve until their
terms expire and until their successors have been appointed and
have qualified. Any vacancy in the office of a member of the
racing commission shall be filled by appointment by the
governor for the unexpired term of the member whose office shall be vacant. No person is eligible for appointment to or to serve upon the racing commission:

(1) Unless he or she is an actual and bona fide resident of this state, shall have resided in this state for a period of at least five years next preceding his or her appointment, shall be a qualified voter of this state and be not less than twenty-five years of age;

(2) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner whatever, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;

(3) While serving as a member of the Legislature or as an elective officer of this state; or

(4) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony, or is a violation of article four, chapter sixty-one of this code.

(c) Each member of the racing commission shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the racing commission.

(d) The racing commission shall have its principal office at the seat of government, and shall meet annually at its principal office in the month of January, and at any other times and places designated by its chairman. At the annual meeting the racing commission shall elect from its membership a chairman and any other officers that are desired. Other meetings of the racing commission may be called by the chairman on such
notice to the other members prescribed by the racing commission.

e) A majority of the members of the racing commission constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No person not a bona fide member of the racing commission shall vote upon or participate in the deliberations of the racing commission on any matter which may come before it. All racing commission records, except as otherwise provided by law, shall be open to public inspection during regular office hours.

(f) As soon as possible after the close of each calendar year, the racing commission shall submit to the governor a report of the transactions of the racing commission during the preceding calendar year.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§21A-2-5. Traveling expenses.

The commissioner of the bureau of employment programs shall receive the necessary traveling expenses incident to the performance of his or her duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

*§22-1-6. Secretary of the department of environmental protection.

*Clerk's Note: This section was also amended by H. B. 2218 (Chapter 123), which passed subsequent to this act.
(a) The secretary is the chief executive officer of the department. Subject to section seven of this article and other provisions of law, the secretary shall organize the department into those offices, sections, agencies and other units of activity 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 operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with the substitute having the same powers, duties, authority and responsibility as the director. 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 any 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 procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary may:

(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 funds are available, fees and expenses incidental to the 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 of the department 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 demon-
strated 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
immediately forfeit and vacate his or her office as secretary in
the event he or she becomes a candidate for or accepts appoint-
ment to any other public office or political party committee.

(g) The secretary shall be allowed and paid necessary
expenses incident to the performance of his or her official
duties. Prior to the assumption of the duties of his or her office,
the 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. The executed oath and bond shall be filed in
the office of the secretary of state. Premiums on the bond shall
be paid from the department funds.
CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-3. Director of the office of miners' health, safety and training.

(a) The director of the office of miners’ health, safety and training is responsible for surface and underground safety inspections of coal mines and the administration of the office of miners’ health, safety and training.

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor.

(d) The director of the office of miners’ health, safety and training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years' experience in underground coal mining and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly
interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section 5, 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. The executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from office funds.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.

(a) The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and
duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, and the commissioner of the bureau of public health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. Each board member serves until the appointment and qualification of his or her successor. No more than two of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

(c) All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.
(d) Annually the board shall elect one of its appointed members as chair and another as vice chair, and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he or she is appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(e) The secretary of the division of environmental protection, the commissioner of the bureau of public health and the state officer or employee most responsible for economic or community development shall not receive any compensation for serving as board members. Each of the four appointed members of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of the board. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(f) There shall also be a director of the authority appointed by the board. The compensation of the director shall be fixed by the board.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.
§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia is continued and directed as provided by this chapter, chapter twenty-four-a, chapter twenty-four-b and chapter twenty-four-d of this code. After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section five, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, two thousand one. The public service commission may sue and be sued by that name. The public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, with not less than ten years' actual work experience in the legal profession as a member of a state bar. No more than two of the commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of this state. The oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

*Clerk's Note: This section was also amended by S. B. 449 (Chapter 284), which passed prior to this act.
(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued. Upon expiration of the terms, appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds of a public utility subject to the provisions of this chapter, or who is pecuniarily interested in a public utility subject to the provisions of this chapter, may serve as a member of the commission or as an employee of the commission. Nor may any commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(d) The salaries of members of the public service commission and the manner in which they are paid established by the prior enactment of this section are continued. Effective the first day of July, two thousand one the annual salary of each commissioner provided in section two-a, article seven, chapter six of this code shall be paid in monthly installments from the special funds in the percentages that follow:
(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, eighty percent;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seventeen percent; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, three percent.

In addition to the salary provided for all commissioners in section two-a, article seven, chapter six of this code, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

(a) The governing body of the authority shall consist of the voting members of the board as provided for in section three of this article and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The secretary of the department of administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet quarterly, unless a special meeting is called by its chairman.
(b) A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

(d) On or before the first day of April, two thousand, the West Virginia regional jail and correctional facility authority board shall, with the advice and consent of the Senate, appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The compensation of the director shall be at the same rate as the commissioner of corrections. The appointment shall be for a term of five years to begin on the first day of April, two thousand. The executive director may employ any other personnel he or she determines necessary and may appoint counsel and legal staff for the authority and retain any temporary engineering, financial and other consultants or technicians that are required for any special study or survey consistent with the provisions of this article. The executive director may engage in negotiations and carry out plans to implement the provisions of this article and exercise those powers listed in section five of this article on behalf of the authority. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

(e) All costs incidental to the administration of the authority, including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.
AN ACT to amend and reenact section seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salary of civilian employees of the state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.

(a) The superintendent shall establish within the West Virginia state police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the division.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the
armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one years of age, of sound constitution and good moral character; shall be required to pass any mental and physical examination and meet other requirements as may be provided for in rules promulgated by the cadet selection board: 

Provided, That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the division because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code, and shall take positive steps to encourage applications for division membership from females and minority groups within the state.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the division at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint such civilian employees as may be necessary, and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

(h) Effective the first day of July, two thousand one, civilian employees with a minimum of five years service shall receive a salary increase equal to one hundred dollars a year for each year of service as a civilian employee. Every three years thereafter, civilian employees who have five or more years of service shall receive an annual salary increase of three hundred dollars. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.
AN ACT to amend and reenact section five, article twelve-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four, chapter twenty-nine of said code; to amend and reenact sections five, nine and fifteen-b, article nineteen of said chapter; to amend and reenact section seven, article two, chapter twenty-nine-a of said code; to amend article one, chapter twenty-nine-c of said code by adding thereto a new section, designated section one hundred seven; to amend and reenact section one hundred eight, article one, chapter thirty-one-b of said code; to amend and reenact section twelve, article four, chapter thirty-three of said code; to amend and reenact section five, article six-c, chapter forty-six-a of said code; to amend and reenact section seventeen, article two, chapter forty-seven of said code; to amend and reenact section one, article ten, chapter forty-seven-b of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to fees and charges for services of the secretary of state; the deposit of those fees; and creating an appropriated special revenue account.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.
29. Miscellaneous Boards and Officers.
29A. State Administrative Procedures Act.
29C. Uniform Notary Act.
33. Insurance.
46A. West Virginia Consumer Credit and Protection Act.
47. Regulation of Trade.
47B. Uniform Partnership Act.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.
Every domestic and foreign corporation and every domestic and foreign limited partnership shall pay an annual fee of twenty-five dollars for the services of the secretary of state as attorney-in-fact for the corporation or limited partnership, which fee is due and payable at the initial registration of the corporation and limited partnership and every year thereafter with the same return, collected by the same officers, and accounted for in the same way as the annual license tax imposed on corporations under this article. The tax commissioner shall deposit one half of all attorney-in-fact fees collected under this section in the state general revenue fund and one half of the fees in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. Any balance of attorney-in-fact fees previously collected by the commissioner on behalf of the secretary of state as provided by chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred ninety-two, and remaining in the account to which those deposits were made by the commissioner on or before the thirtieth day of June, two thousand one, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-12. Commissioners out of state; qualifications; fee.
The governor, if he or she considers it proper, may appoint any persons residing within or without this state and within the United States, its territories or possessions as commissioners to acknowledge signatures performed in or out of state by persons residing in or out of the state of West Virginia covering deeds, leases and other writings pertaining to West Virginia property for recordation in the state of West Virginia. The commissioners shall hold office for ten years, unless sooner removed by the governor. Before performing any duties as a commissioner, the commissioner shall enter into a bond in the penalty sum of one thousand dollars with corporate surety to be approved by the secretary of state and filed in his or her office. A fee of one hundred dollars for each commission issued shall be paid to the secretary of state. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the
secretary of state upon forms prescribed by him or her which shall be good for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It is the duty of the president, chairman or principal officer of the charitable organization to file the statements required under this article. The statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization’s immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fund raising and showing how the funds were disbursed or allocated for the same fiscal year. Provided, That for organizations raising more than fifty thousand dollars per year in
contributions, the balance sheet and income and expense statement, or financial statement provided, shall be audited by an independent public accountant. Organizations are required to report the amount of money raised in the state and the amount spent in the state for charitable purposes;

(7) A copy of any determination of the organization's tax exempt status under the provisions of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and
(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided for in subsection (d), section seven of this article.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the secretary of state. An independent member agency of a federated fund-raising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the secretary of state shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization collecting less than one million dollars during any year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifteen dollars; every charitable organization collecting more than one million dollars during one year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifty dollars; and a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall
be deposited in the state general revenue fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the secretary of state may extend the due date for the annual filing of a registration statement or report for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization and/or professional fundraiser, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of twenty-five dollars: Provided, That the total amount of the additional fees for a registration statement or report required to be filed in any one year shall not exceed five hundred dollars. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled "charitable organization fund" as established by chapter thirty-four, acts of the Legislature, regular session, one thousand nine hundred ninety two, shall be transferred to the service fees and
collections account established by section two, article one, chapter fifty-nine of this code for the operation of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article unless he or she has first registered with the secretary of state. Applications for the registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain the information he or she requires. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of one hundred dollars. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.
(b) The applicant shall, at the time of the making of an application, file with and have approved by the secretary of state a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars and which shall have one or more sureties satisfactory to the secretary of state whose liability in the aggregate as such sureties will at least equal the said sum and maintain the bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of the bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration is valid throughout the state for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the secretary of state and the payment of the fee prescribed in this section.

(d) The secretary of state or his or her designee shall examine each application and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and the registrant has complied with the requirements of this article and all relevant rules, he or she shall approve the registration.


In any action brought pursuant to the provisions of this article, if the court finds that intentional violations have occurred, the state, upon petition to the court and in addition to any damages awarded any party or parties, may recover attorney fees and a civil penalty not exceeding three times the
amount collected in that civil action. Of any funds recovered as
provided for in this section and any other funds recovered by
the state as the result of an award for damages, penalties or
settlements in enforcing this article, one-half shall be deposited
in the state general revenue fund and one-half shall be deposited
in the service fees and collections account established by
section two, article one, chapter fifty-nine of this code for the
operations of the office of the secretary of state. Any balance
remaining on the thirtieth day of June, two thousand one, in the
existing special revenue account entitled “charitable organiza-
tion fund” as established by chapter thirty-four, acts of the
Legislature, regular session, one thousand nine hundred ninety-
two, shall be transferred to the service fees and collections
account established by section two, article one, chapter fifty-
nine of this code for the operation of the office of the secretary
of state. The secretary of state shall dedicate sufficient re-
sources from that fund or other funds to provide the services
required in this article.

CHAPTER 29A. STATE ADMINISTRATIVE
PROCEDURES ACT.

ARTICLE 2. STATE REGISTER.


(a) The Legislature intends that the secretary of state offer
to the public convenient and efficient access to copies of the
state register or parts of the state register desired by the citizens.
The provisions of this section are enacted in order to provide a
means of doing so pending any other means provided by law or
legislative rule.

(b) All materials filed in the state register shall be indexed
daily in chronological order of filing with a brief description of
the item filed and a columnar cross index to: (1) Agency; (2)
section, article and chapter of the code to which it relates and
(c) To give users of the code of state rules a means to know whether the rule is being superseded by a version of the rule that has become effective, but not yet been final-filed, prepared, proofed and distributed, or may be superseded by a rule which is being proposed and promulgated pursuant to article three but not yet final, the secretary of state shall provide with each update of the code of state rules, a copy of the rule monitor and its cross index which shows the rules that have become effective but not yet distributed and the rules which may be superseded by a rule which is being proposed. The copy of the rule monitor distributed with the updates of the code of state rules shall state plainly that this version of the rule monitor only shows the status of the promulgation of rules as of the date of distribution of the update of the code of state rules and that to obtain the most recent status of the rules, the user should consult the rule monitor in the most recent publication of the state register. With the first distribution to the loose-leaf version of the code of state rules, the secretary of state shall also distribute a divider where the current rule monitor shall be maintained. With the first distribution, the secretary of state shall also include instructions, with a copy for insertion in or on the front of each volume of the loose-leaf versions of the code of state rules, to users on how the rule monitor can be used to determine whether the version of the rule in the code of state rules is currently in effect. This subsection is not to be construed to require that subscribers to the updates of the code of state rules receive a subscription to the state register.

(d) The secretary of state shall cause to be duplicated in such number as is required, on white paper with two punches suitable for fastening in two-ring binders, the permanent biennial state register, the chronological index and other
materials filed in the register, or any part by agency or section, article or chapter for subscription at a cost including labor, paper and postage, sufficient in his or her judgment to defray the expense of duplication. The secretary of state shall also offer, at least at monthly intervals, supplements to the published materials listed in this subsection. Any subscription for monthly supplements shall be offered annually and shall include the chronological index and materials related to the agency or agencies, or section, article or chapter of the code as a person may designate. A person may limit the request to notices only, to notices and rules or to notices and proposed rules, or any combination thereof.

(e) Every two years, the secretary of state shall offer for purchase succeeding biennial permanent state registers which shall consist of all rules effective on the date of publication selected by the secretary of state, which date shall be at least two years from the last publication date and materials filed in the state register relating to the rules. The cost of the succeeding biennial permanent state register and for the portion relating to any agency or any section, article or chapter of the code which may be designated by a person purchasing the same shall be fixed in the same manner specified in section eleven of this article.

(f) The secretary of state may omit from any duplication made pursuant to subsection (e) of this section any rules the duplication of which would be unduly cumbersome, expensive or otherwise inexpedient, if a copy of the rules is made available from the original filing of the rule, at a price not exceeding the cost of duplication, and if the volume from which the rule is omitted includes a notice in that portion of the publication in which the rule would have been located, stating: (1) The general subject matter of the omitted rule; (2) each section, article and chapter of this code to which the omitted rule relates; and (3) the means by which a copy of the omitted rule may be obtained.
(g) The secretary of state may propose changes to the procedures outlined in subsection (f) of this section by proposing a legislative rule under the provisions of section nine, article three of this chapter, but may promulgate no rules containing those changes unless authorized by the Legislature pursuant to article three of this chapter.

(h) Beginning the first day of July, two thousand one, one half of the fees and amounts collected for the sale of the state register, the code of state rules and other copies or data provided by the secretary of state shall be deposited in the state general revenue fund and one half of the fees in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operations of the office of the secretary of state. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled “state register” as established by chapter one hundred twenty-one, acts of the Legislature, regular session, one thousand nine hundred eighty-two, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

CHAPTER 29C. UNIFORM NOTARY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§29C-1-107. Disposition of fees.

All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the
operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-108. Designated office and agent for service of process.

(a) A limited liability company and a foreign limited liability company authorized to do business in this state shall designate and continuously maintain in this state:

(1) An office, which need not be a place of its business in this state; and

(2) An agent and street address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this state, a domestic corporation, another limited liability company or a foreign corporation or foreign company authorized to do business in this state.

(c) Every limited liability company shall pay an annual fee of twenty-five dollars for the services of the secretary of state as attorney-in-fact for the limited liability company, which fee shall be due and payable at the initial registration of the limited liability company and every year thereafter the same time that the annual report required under section two hundred eleven, article two of this chapter is due and one half of each fee shall be deposited in the state fund, general revenue and one half of the fees in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secre-
(d) The secretary of state shall keep a record of all pro-
cesses, notices and demands served pursuant to this section and
record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process,
notice or demand in any manner otherwise provided by law.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-12. Service of process on licensed insurers.

The secretary of state shall be, and is hereby constituted,
the attorney-in-fact of every licensed insurer, domestic, foreign
or alien, transacting insurance in this state, upon whom all legal
process in any action, suit or proceeding against it shall be
served and he or she may accept service of the process. The
process shall be served upon the secretary of state, or accepted
by him or her, in the same manner as provided for service of
process upon unlicensed insurers under subdivisions (2) and
(3), subsection (b), section thirteen of this article. Each licensed
insurer shall pay to the secretary of state an annual fee of
twenty-five dollars for services as authorized agent for service
of process, one half of which shall be deposited in the state
fund, general revenue and one half of the fees in the service
fees and collections account established by section two, article
one, chapter fifty-nine of this code for the operation of the
office of the secretary of state.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.
§46A-6C-5. Registration.

(a) A credit services organization shall file a registration statement with the secretary of state before conducting business in this state. The registration statement shall contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

(b) The registration statement shall also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(c) The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The secretary of state may charge each credit services organization that files a registration statement with the secretary
of state a reasonable fee not to exceed one hundred dollars to
cover the cost of filing. The secretary of state may not require
a credit services organization to provide information other than
that provided in the registration statement. All fees and moneys
collected by the secretary of state pursuant to the provisions of
this article shall be deposited by the secretary of state as
follows: One-half shall be deposited in the state fund, general
revenue and one-half shall be deposited in the service fees and
collections account established by section two, article one,
chapter fifty-nine of this code for the operation of the office of
the secretary of state. The secretary of state shall dedicate
sufficient resources from that fund or other funds to provide the
services required in this article.

(f) The bond or surety account shall be maintained until two
years after the date that the credit services organization ceases
operations.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-17. Fees.

(a) The secretary shall charge the following fees for
services provided pursuant to the provisions of this article:

(1) For an application fee and for a renewal fee, fifty
dollars; and

(2) For recording any instrument specified in section seven
of this article, twenty-five dollars.

(b) One half of each fee shall be deposited in the state fund,
general revenue and one half of the fee shall be deposited in the
service fees and collections account established by section two,
article one, chapter fifty-nine of this code for the operation of
the office of the secretary of state. Any balance remaining on
the thirtieth day of June, two thousand one, in the existing
special revenue account entitled "trademarks" as established by
chapter two hundred forty-nine, acts of the Legislature, regular
session, one thousand nine hundred ninety-six, shall be trans-
ferred to the service fees and collections account established by
section two, article one, chapter fifty-nine of this code for the
operation of the office of the secretary of state. The secretary of
state shall dedicate sufficient resources from that fund or other
funds to provide the services required in this article.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIPS.

§47B-10-1. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a
partnership shall file with the secretary of state a statement of
registration stating the name of the partnership; the address of
its principal office; if the partnership's principal office is not
located in this state, the address of a registered office and the
name and address of a registered agent for service of process in
this state, which the partnership will be required to maintain; a
brief statement of the business in which the partnership
engages; any other matters that the partnership determines to
include; and that the partnership thereby registers as a regis-
tered limited liability partnership.

(b) The registration shall be executed by one or more
partners authorized to execute a registration.

(c) The registration shall be accompanied by a fee of two
hundred fifty dollars.
(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, on a date specified by the secretary of state, an annual fee of five hundred dollars. The fee shall be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership’s registration.

(f) Registration is effective:

(1) Immediately after the date a registration is filed; or

(2) On a date specified in the statement of registration, which date shall not be more than sixty days after the date of filing.

(g) Registration remains effective until:

(1) It is voluntarily withdrawn by filing with the secretary of state a statement of withdrawal; or

(2) Thirty days after receipt by the partnership of a notice from the secretary of state, which shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (e) of this section, unless the fee is paid within a thirty-day period.

(h) The status of a partnership as a registered limited liability partnership and the liability of the partners thereof shall not be affected by:

(1) Errors in the information contained in a statement of registration under subsection (a) of this section or notice under subsection (e) of this section; or
(2) Changes after the filing of the statement of registration or notice in the information stated in the registration or notice.

(i) The secretary of state shall provide forms for the statement of registration under subsection (a) of this section or a notice under subsection (e) of this section.

(j) All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

(a) Except as may be otherwise provided in this code, the secretary of state shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger, consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit
corporation .................................................. $50.00

(B) Articles of incorporation of nonprofit corporation . 25.00

(C) Agreement of a general partnership .............. 50.00

(D) Certificate of a limited partnership .......... 100.00

(E) Agreement of a voluntary association ........... 50.00

(F) Articles of organization of a business trust .... 50.00

(G) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax ....................... 25.00

(H) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association .................... 25.00

(I) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust ...................... 25.00

(J) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law ...... 25.00

(K) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts. ............................... 25.00
(L) Plus for each additional party to the merger in excess of two ........................................ 15.00

(M) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity ........................................ 25.00

(N) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership ........................................ 25.00

(O) Revocation of voluntary dissolution of a corporation, voluntary association or business trust .................. 15.00

(P) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership ....................... 25.00

(Q) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution ........................................ 25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

(A) Certificate of authority of for-profit corporation ........................................ $100.00

(B) Certificate of authority of nonprofit corporation ........................................ 50.00

(C) Certificate of exemption from certificate of authority ........................................ 25.00
(D) Registration of a general partnership ........... 50.00

(E) Registration of a limited partnership ........... 150.00

(F) Registration of a limited liability partnership for two-year term ........................................... 500.00

(G) Registration of a voluntary association ........... 50.00

(H) Registration of a trust or business trust ........... 50.00

(I) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax . 25.00

(J) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust ......................... 25.00

(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law ... 25.00

(L) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust ................................................ 25.00

(M) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts ......................... 25.00

(N) Plus for each additional party to the merger in excess of two .......................................... 5.00
(O) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity: 25.00

(P) Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business trust: 25.00

(3) For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law: 15.00

(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company: 15.00

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation: $10.00

(B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company: 10.00

(C) Certificate of existence of any business entity, trademark or service mark registered with the secretary of state: 10.00
(D) Certified copy of corporate charter or comparable organizing documents for other business entities .... 15.00

(E) Plus, for each additional amendment, restatement or other additional document ......................... 5.00

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership ..................... 25.00

(G) And for the annual renewal of the name registration ......................................................... 10.00

(H) Any other certificate not herein specified .... 10.00

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:

(A) Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions ........................................... $10.00

(B) Plus, for each additional certificate pertaining to the same transaction ................................. 5.00

(C) Any other certificate not herein specified .... 10.00

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law ............................................. 15.00

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the secretary of state. ....................... 5.00
(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the secretary of state. ............... 15.00

(7) For a search of records of the office conducted by employees of or at the expense of the secretary of state upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the secretary of state, no less than ........................................ $10.00

(B) For searches of archival records maintained at sites other than the office of the secretary of state which require more than one hour, for each hour or fraction thereof consumed in making such search .................. 10.00

(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data ..................................... 5.00

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor, any actual cost, but not less than .................. 25.00

(E) The cost of the search shall be in addition to the cost of any copies or printouts prepared or any certificate issued pursuant thereto or based thereon.

(F) For recording any paper for which no specific fee is prescribed ........................................ 5.00

(8) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:
(A) For a copy of any paper or printout of electronic data, if
one sheet ................................................................. $1.00

(B) For each sheet after the first ................................. .50

(C) For sending the copies or lists by fax transmission . 5.00

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the secretary of state at a rate approximating 2.00 plus .10 per page and rounded to the nearest dollar.

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available printed format, plus, for each required disk, which shall be provided by the secretary of state ....................... 5.00

(b) The secretary of state may promulgate legislative rules for charges for on-line electronic access to database information or other information maintained by the secretary of state.

(c) For any other work or service not enumerated in this subsection, the fee prescribed elsewhere in this code or a rule promulgated under the authority of this code.

(d) The records maintained by the secretary of state are prepared and indexed at the expense of the state and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

(e) The secretary of state may provide printed or electronic information free of charge as he or she considers necessary and efficient for the purpose of informing the general public or the news media.
(f) There is hereby established in the state treasury a special
revenue account to be known as the "service fees and collec-
tions" account. Expenditures from the account shall be used for
the operation of the office of the secretary of state and are not
authorized from collections, but are to be made only in accord-
dance 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. Notwithstanding any other
provision of this code, one half of all the fees and service
charges established in the following sections and for the
following purposes shall be deposited by the secretary of state
or other collecting agency to that special revenue account and
used for the operation of the office of the secretary of state;

1. The annual attorney-in-fact fee for corporations and
limited partnerships established in section five, article twelve-c,
chapter eleven of this code;

2. The fees received for the sale of the state register, code
of state rules and other copies established by rule and author-
ized by section seven, article two, chapter twenty-nine-a of this
code;

3. The registration fees, late fees and legal settlements
charged for registration and enforcement of the charitable
organizations and professional solicitations established in
sections five, nine and fifteen-b, article nineteen, chapter
twenty-nine of this code;

4. The annual attorney-in-fact fee for limited liability
companies as designated in section one hundred eight, article
one, chapter thirty-one-b of this code and established in section
two hundred eleven, article two of said chapter;

5. The filing fees and search and copying fees for uniform
commercial code transactions established by section five
hundred twenty-five, article nine, chapter forty-six of this code;
(6) The annual attorney-in-fact fee for licensed insurers established in section twelve, article four, chapter thirty-three of this code;

(7) The fees for the application and record maintenance of all notaries public established by section one hundred seven, article one, chapter twenty-nine-c of this code;

(8) The fees for the application and record maintenance of commissioners for West Virginia as established by section twelve, article four, chapter twenty-nine of this code;

(9) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(10) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(11) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(12) All fees for services, the sale of photocopies and data maintained at the expense of the secretary of state as provided in this section; and

(13) All registration, license and other fees collected by the secretary of state not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds five hundred thousand dollars as of the thirtieth day of June, two thousand three, and each year thereafter, shall be expired to the state fund, general revenue fund.
AN ACT to amend and reenact section five hundred twenty-five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, relating to the deposit of fees to be charged by the secretary of state.

Be it enacted by the Legislature of West Virginia:

That section five hundred twenty-five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as contained in chapter two hundred seventy-two, acts of the Legislature of West Virginia, regular session, two thousand, be amended and reenacted to read as follows:

ARTICLE 9. SECURED TRANSACTIONS.

§46-9-525. Fees.

(a) Initial financing statement or other record: general rule.

— Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

*Clerk’s Note: This section was also amended by S. B. 732 (Chapter 306), which passed subsequent to this act.
(1) Ten dollars if the record is communicated in writing and consists of one or two pages;

(2) Ten dollars if the record is communicated in writing and consists of more than two pages; and

(3) Ten dollars if the record is communicated by another medium authorized by filing-office rule.

(b) Initial financing statement: Public-finance and manufactured housing transactions. — Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the financing statement indicates that it is filed in connection with a public-finance transaction; and

(2) Ten dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Number of names. — The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) Response to information request. — The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five dollars if the request is communicated in writing;

(2) Five dollars if the request is communicated by another medium authorized by filing-office rule; and

(3) Fifty cents per page for each active lien.
(e) **Record of mortgage.** — This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) **Deposit of funds.** — All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state as follows: One-half shall be deposited in the state fund, general revenue, and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. Any balance remaining on the thirtieth day of June, two thousand one, in the existing special revenue account entitled “uniform commercial code” as established by chapter two hundred four, acts of the Legislature, regular session one thousand nine hundred eighty-nine, shall be transferred to the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the secretary of state. The secretary of state shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

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**CHAPTER 266**

(H. B. 2409 — By Delegates Staton, Stemple, Varner and Beane)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections two and five, article twelve, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the sex offender registry; clarifying use of information regarding the identity of victims; requiring registrants to provide information about their internet accounts and screen names; and excluding certain information from dissemination under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article twelve, 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 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a statutory provision of another state, the United States code or the uniform code of military justice which requires proof of the same essential elements shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:
(1) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an act of the Legislature during the year two thousand legislative session;

(2) Article eight-c;

(3) Sections five and six, article eight-d;

(4) Section fourteen, article two; or

(5) Sections six, seven, twelve and thirteen, article eight.

c) Any person who has been convicted of a criminal offense, and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

d) Persons required to register under the provisions of this article shall provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

(3) The registrant’s social security number;

(4) A full-face photograph of the registrant at the time of registration;
(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints; and

(7) Information relating to any internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the internet.

(e) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the commissioner of corrections, regional jail administrator, city or sheriff operating a jail, or secretary of the department of health and human resources which releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register and send written notice of the release of the person to the state police within three days of receiving the information. The notice must include the information required by subsection (d) of this section.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and
(3) Documentation of any treatment received for the mental
abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty
by reason of mental illness, mental retardation or addiction in
a court of this state of the crimes set forth in subsection (b) of
this section, the person shall sign in open court a statement
acknowledging that he or she understands the requirements
imposed by this article. The court shall inform the person so
convicted of the requirements to register imposed by this article
and shall further satisfy itself by interrogation of the defendant
or his or her counsel that the defendant has received notice of
the provisions of this article and that the defendant understands
the provisions. The statement, when signed and witnessed,
constitutes prima facie evidence that the person had knowledge
of the requirements of this article. Persons who have not signed
a statement under the provisions of this subsection and who are
subject to the registration requirements of this article must be
informed of the requirement by the state police whenever the
state police obtain information that the person is subject to
registration requirements.

(h) The state police shall maintain a central registry of all
persons who register under this article and shall release
information only as provided in this article. The information
required to be made public by the state police by subdivision
(2), subsection (b), section five of this article is to be accessible
through the internet. No information relating to internet
accounts, screen names, user names or aliases a registrant has
or uses may be released through the internet.

(i) For the purpose of this article, "sexually violent offense"
means:

(1) Sexual assault in the first degree as set forth in section
three, article eight-b, chapter sixty-one of this code, or of a
(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter sixty-one of this code, or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code which was repealed by an act of the Legislature during the two thousand legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code, or of a similar provision in another state, federal or military jurisdiction.

(j) For purposes of this article, the term “sexually motivated” means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.
§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

(a) Within five working days after receiving any notification as described in this article, the state police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;

(2) The county superintendent of schools where the registrant resides, is employed or attends school or a training facility;

(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, is employed or attends school or a training facility;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, is employed or attends school or a training facility; and
(6) The federal bureau of investigation (FBI).

(b) Information concerning persons whose names are contained in the sexual offender registry and who are not required to register for life is to be disseminated only in the following manner and shall not be subject to the requirements of the West Virginia freedom of information act, as set forth in chapter twenty-nine-b of this code:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the state police shall notify the prosecuting attorney of the county in which the person resides, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the state police in conducting a community notification program which is to include publication of the offender's name, photograph, place of residence, employment and education or training, as well as information concerning the legal rights and obligations of both the offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the state police consider it necessary to best educate the public as to the nature of sexual offenses: Provided, That no victim's name may be released in any public notification pursuant to this subsection. No information relating to internet accounts, screen names, user names or aliases a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and state police may conduct a community notification program in the county of residence, employment or where a person is attending school or a training facility of any person who is required to register for life under the terms of subdivision (2), subsection (a), section four of this article. Community notification may be repeated when determined to be appropriate by the prosecuting attorney;
(2) The state police shall maintain and make available to the public at least quarterly the list of all persons who are required to register for life according to the terms of subdivision (2), subsection (a), section four of this article. No information concerning the identity of a victim of an offense requiring registration or information relating to internet accounts, screen names, user names or aliases a registrant has or uses may be released with this list. The method of publication and access to this list are to be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for an order requiring the state police to release information about persons residing in that county who are required to register under section two of this article. The court shall determine whether information contained on the list is relevant to public safety and whether its relevance outweighs the importance of confidentiality. If the court orders information to be released, it may further order limitations upon secondary dissemination by the resident seeking the information. In no event may information concerning the identity of a victim of an offense requiring registration or information relating to internet accounts, screen names, user names or aliases a registrant has or uses be released.

(c) The state police may furnish information and documentation required in connection with the registration to authorized law-enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the records will be used solely for law enforcement-related purposes. The state police may disclose information collected under this article to federal, state and local
governmental agencies responsible for conducting preemployment checks.

(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

CHAPTER 267

(S. B. 157 — By Senators Hunter, Mitchell, Caldwell, Kessler, Ross, Oliverio and Rowe)

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

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a definition of social worker.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.
The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School" means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

(b) "District" means county school district;

(c) "State board" means the West Virginia board of education;

(d) "Board" means the county board of education;

(e) "State superintendent" means the state superintendent of free schools;

(f) "Superintendent" means the county superintendent of schools;

(g) "Teacher" means teacher, supervisor, principal, superintendent or public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" means all nonteaching school employees not included in the above definition of "teacher";

(i) "Social worker" means a nonteaching school employee who, at a minimum, possesses an undergraduate degree in social work from an accredited institution of higher learning and who provides various professional social work services, activities or methods as defined by the state board for the benefit of students;
(j) "Regular full-time employee" means any person employed by a county board of education who has a regular position or job throughout his or her employment term, without regard to hours or method of pay;

(k) "Career clusters" means broad groupings of related occupations;

(l) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;

(m) "School-age juvenile" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools in accordance with: (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter;

(n) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter;

(o) "Low density county" means a county whose ratio of student population to square miles is less than or equal to the state average ratio as computed by the state department of education;

(p) "High density county" means a county whose ratio of student population to square miles is greater than the state average ratio as computed by the state department of education; and

(q) "Casual deficit" means a deficit of not more than 3 percent of the approved levy estimate or a deficit that is nonrecurring from year to year.
AN ACT to amend and reenact section six, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of the state rail authority to enter contracts and agreements; authorizing the acquisition of rolling stock and equipment of a specified value in lieu of meeting contract requirements otherwise imposed on spending units; raising the cost threshold under which certain lowest responsible bidders on contracts may be selected; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

That section six, article eighteen, 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 18. WEST VIRGINIA STATE RAIL AUTHORITY.


1 The West Virginia state rail authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose.

3 (a) The authority may:
(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and make effective its powers and duties.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections ten, eleven and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County. The location of the principal office of the authority shall be determined by the governor.

(5) Make loans and grants to governmental agencies and persons for carrying out railroad projects by any governmental agency or person and, in accordance with chapter twenty-nine-a of this code, propose rules for legislative approval and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to or contract for operation by a governmental agency or person, railroad projects and, in accordance with chapter twenty-nine-a of this code, propose legislative rules for the use of these projects.

(7) Make available the use or services of any railroad project to one or more persons, one or more governmental agencies, or any combination thereof.
(8) Issue railroad maintenance authority bonds and notes and refunding bonds of the state, payable solely from revenues as provided in section ten of this article unless the bonds are refunded by refunding bonds, for the purpose of paying any part of the cost of one or more railroad projects or parts thereof.

(9) Acquire, by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on terms and in the manner it considers proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, rail properties and appurtenant rights and interests necessary for carrying out railroad projects.

(11) (A) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contract and agreements in accordance with the provisions set forth in paragraph (B) of this subdivision.

(B) Make and enter into contracts and agreements to acquire rolling stock or equipment with a value of one hundred thousand dollars or less exempt from the provisions of article three, chapter five-a of this code.

(i) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which set forth the methods for determining value of rolling stock or equipment to be purchased in accordance with the provisions of paragraph (B) of this subdivision.
(C) Where rolling stock, equipment or trackage of the authority is in need of immediate maintenance, repair or reconstruction in order to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers or danger to authority personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto:

(i) If the cost under the contract or agreement involves an expenditure of more than one thousand dollars, but ten thousand dollars or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement.

(ii) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than ten thousand dollars, but one hundred thousand dollars or less, the authority shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the authority in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(D) Notwithstanding any other provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a railroad project pursuant to section sixteen of this article is not subject to the provisions of article three, chapter five-a of this code or any legislative rule promulgated pursuant thereto, and the authority may enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper.
under the circumstances and in the best interests of proper
operation or of efficient acquisition or construction of the
railroad project.

(E) The authority may reject any and all bids. A bond with
good and sufficient surety, approved by the authority, is
required of all contractors in an amount equal to at least fifty
percent of the contract price, conditioned upon the faithful
performance of the contract.

(12) Appoint a director and employ managers, superinten-
dents and other employees and retain or contract with consult-
ing engineers, financial consultants, accountants, attorneys and
other consultants and independent contractors as are necessary
in its judgment to carry out the provisions of this article, and fix
the compensation or fees thereof. All expenses thereof are
payable from the proceeds of railroad maintenance authority
revenue bonds or notes issued by the authority, from revenues
and funds appropriated for this purpose by the Legislature or
from grants from the federal government which may be used for
such purpose.

(13) Receive and accept from any state or federal agency,
grants for or in aid of the construction of any railroad project or
for research and development with respect to railroads and
receive and accept aid or contributions from any source of
money, property, labor or other things of value, to be held, used
and applied only for the purposes for which the grants and
contributions are made.

(14) Engage in research and development with respect to
railroads.

(15) Purchase fire and extended coverage and liability
insurance for any railroad project and for the principal office
and suboffices of the authority, insurance protecting the
authority and its officers and employees against liability, if any,
for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers’ compensation program.

(16) Charge, alter and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(b) In addition, the authority has the power to:

(1) Acquire rail properties both within and not within the jurisdiction of the interstate commerce commission and rail properties within the purview of the federal Regional Rail Reorganization Act of 1973, any amendments to it and any other relevant federal legislation.

(2) Enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both of rail properties upon the terms, conditions, rates or rentals that can best effectuate the purposes of this article.

(3) Acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(4) Establish a state plan for rail transportation and local rail services.

(5) Administer and coordinate the state plan.

(6) Provide in the state plan for the equitable distribution of federal rail service continuation subsidies among state, local and regional transportation authorities.
(7) Promote, supervise and support safe, adequate and efficient rail services.

(8) Employ sufficiently trained and qualified personnel for these purposes.

(9) Maintain adequate programs of investigation, research, promotion and development in connection with the purposes and to provide for public participation therein.

(10) Provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(11) Comply with the regulations of the secretary of transportation of the United States department of transportation affecting federal rail service continuation programs.

(12) Do all things otherwise necessary to maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973, and to qualify for rail service continuation subsidies pursuant to the federal Regional Rail Reorganization Act of 1973.
AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-six, relating to prohibiting contractors from using or supplying steel products for state contract projects other than those steel products made in the United States; definitions; authorization by director of purchasing to use foreign steel products; civil penalties for use or supply of prohibited steel products; circumstances under which contractors are not subject to civil penalties; disposition of civil penalties collected; investigations and findings by director of purchasing; requests by director of purchasing to attorney general to commence civil actions for violations; circumstances under which provisions void; and resolution of conflicts between statutes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-56. Preference for the use of domestic steel products in state contract projects; exceptions; civil penalties.

1 (a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, no contractor may use or supply steel products for a state contract project other than those steel products made in the United States.

2 (2) As used in this section:

3 (A) “State contract project” means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads
or highways, or the installation of any heating or cooling or
ventilating plants or other equipment, or the supply of any
materials for such projects, pursuant to a contract with the state
of West Virginia for which bids were solicited on or after the
effective date of this section.

(B) "Steel products" means products rolled, formed,
shaped, drawn, extruded, forged, cast, fabricated or otherwise
similarly processed, or processed by a combination of two or
more of such operations, from steel made by the open hearth,
basic oxygen, electric furnace, bessemer or other steel making
process.

(C) "United States" means the United States of America
and includes all territory, continental or insular, subject to the
jurisdiction of the United States.

(b) Notwithstanding any provision of subsection (a) of this
section to the contrary, the director of the purchasing division
may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed
one tenth of one percent of the total contract cost or two
thousand five hundred dollars, whichever is greater. For the
purposes of this section, the cost is the value of the steel
product as delivered to the project; or

(2) The director of the purchasing division determines that
specified steel materials are not produced in the United States
in sufficient quantity or otherwise are not reasonably available
to meet contract requirements.

(c) A contractor who uses steel products in violation of
subsection (a) of this section shall pay a civil penalty equal to
one and one-half times the cost of the steel products used in
violation of said subsection: Provided, That any contractor in
violation of this section who relied in good faith upon docu-
ments of title and origin indicating that the steel products were
made in the United States shall not be subject to the civil
penalty. All civil penalties paid pursuant to this section shall be
collected by the director and deposited in the general revenue
fund of the state.

(d) When the director of the purchasing division has
reasonable cause to believe that a contractor has used or is
using steel products in violation of subsection (a) of this
section, the director shall conduct an investigation to determine
whether the contractor has used or is using steel products in
violation of said subsection. Upon a finding by the director
pursuant to the investigation that the contractor has used or is
using steel products in violation of subsection (a) of this
section, the director shall request the attorney general to
commence an action under this section against the contractor
for the violation. Any action under this section is a civil action.

(e) If any of the requirements or provisions set forth in this
section jeopardize the receipt of federal funds, then such
requirement or provision shall be void and of no force and
effect.

(f) It is the intent of the Legislature that the provisions of
article nineteen, chapter five of this code continue in force,
except to the extent that if any provision of said article is
construed to conflict with a provision of this section, the
conflict shall be resolved in favor of the provisions of this
section.

(g) This section may be cited as the “West Virginia
American Steel Act of 2001”.

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition against hunting on Sunday on private lands without the written consent of the landowner; and requiring a local option election on the issue of whether Sunday hunting should be permitted in the county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den
or place of refuge, except as may be authorized by rules promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal:

Provided, That it may not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by rules promulgated by the director;
(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he or she has in his or her possession a permit in writing issued to him or her by the director: Provided, That this section may not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock
Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o’clock antemeridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o’clock antemeridian on that Sunday: Provided, That traps previously and legally set may be tended after the hour of five o’clock antemeridian on Sunday, and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, shall be subject to a one hundred dollar fine;

(11) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the director: Provided, That snaring of
any species of suckers, carp, fallfish and creek chubs shall at all
times be lawful;

(15) Employ or hire, or induce or persuade, by the use of
money or other things of value, or by any means, any person to
hunt, take, catch or kill any wild animal or wild bird except
those species on which there is no closed season, or to fish for,
catch, take or kill any fish, amphibian or aquatic life which is
protected by the provisions of this chapter or rules of the
director, or the sale of which is prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport,
possess or use any migratory game or nongame birds included
in the terms of conventions between the United States and Great
Britain and between the United States and United Mexican
States for the protection of migratory birds and wild mammals
concluded, respectively, the sixteenth day of August, one
thousand nine hundred sixteen, and the seventh day of Febru-
ary, one thousand nine hundred thirty-six, except during the
time and in the manner and numbers prescribed by the Federal
Migratory Bird Treaty Act and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living
or dead, any wild bird, other than a game bird; or expose for
sale, or transport within or without the state any bird, except as
aforesaid. No part of the plumage, skin or body of any protected
bird shall be sold or had in possession for sale, except mounted
or stuffed plumage, skin, bodies or heads of the birds legally
taken and stuffed or mounted, irrespective of whether the bird
was captured within or without this state, except the English or
European sparrow (Passer domesticus), starling (Sturnus
vulgaris), crow (Corvus brachyrhynchos) and cowbird
(Molothrus ater), which may not be protected and the killing
thereof at any time is lawful;
(18) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands, at any time: Provided, however, That nonresidents may
not train dogs in this state at any time except during the legal
small game hunting season: Provided further, That the person
training said dogs does not have firearms or other implements
in his or her possession during the closed season on wild
animals and wild birds, whereby wild animals or wild birds
could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve
field trial, water race or wild hunt hereafter referred to as trial:
Provided, That any person, group of persons, club or organiza-
tion may hold such trial at any time of the year upon obtaining
a permit as is provided for in section fifty-six of this article. The
person responsible for obtaining the permit shall prepare and
keep an accurate record of the names and addresses of all
persons participating in said trial, and make same readily
available for inspection by any conservation officer upon
request;

(26) Except as provided in section four of this article, hunt,
catch, take, kill or attempt to hunt, catch, take or kill any wild
animal, wild bird or wild fowl except during the open season
established by rule of the director as authorized by subdivision
(6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o’clock
antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement which wildlife can be taken, on
private lands on Sunday after the hour of five o’clock
antemeridian: Provided, That the provisions of this subdivision
do not apply in any county until the county commission of the
county holds an election on the question of whether the
provisions of this subdivision prohibiting hunting on Sunday
shall apply within the county and the voters approve the
allowance of hunting on Sunday in the county. The election
shall be determined by a vote of the resident voters of the
county in which the hunting on Sunday is proposed to be
authorized. The county commission of the county in which
Sunday hunting is proposed shall give notice to the public of
the election by publication of the notice as a Class II-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for the publication shall be the county in which the election is
to be held. The date of the last publication of the notice shall
fall on a date within the period of the fourteen consecutive days
next preceding the election.

On the local option election ballot shall be printed the
following:

Shall hunting on Sunday be authorized in _______
County?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the
proposed authorization of Sunday hunting within a county shall
be in accordance with procedures adopted by the commission.
The local option election may be held in conjunction with a
primary or general election, or at a special election. Approval
shall be by a majority of the voters casting votes on the question
of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no
election on the issue may be held for a period of one hundred
four weeks. If a majority votes "yes" no election reconsidering
the action may be held for a period of five years. A local option
election may thereafter be held if a written petition of qualified
voters residing within the county equal to at least five percent
of the number of persons who were registered to vote in the
next preceding general election is received by the county
commission of the county in which Sunday hunting is autho-
rized. The petition may be in any number of counterparts. The
election shall take place at the next primary or general election
scheduled more than ninety days following receipt by the
county commission of the petition required by this subsection:
Provided, That the issue may not be placed on the ballot until
all statutory notice requirements have been met. No local law
or regulation providing any penalty, disability, restriction,
regulation or prohibition of Sunday hunting may be enacted,
and the provisions of this article preempt all regulations, rules,
ordinances and laws of any county or municipality in conflict
with this subdivision.

CHAPTER 271

(H. B. 3241 — By Delegates Douglas, Kuhn, Varner,
Butcher, Manchin, Prunty and Leggett)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, five, five-a and
five-b, article ten, chapter four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, changing agency
termination dates pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, five, five-a and five-b, article ten,
chapter four of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand two: Division of highways; division of labor; department of health and human resources; division of natural resources; and division of corrections.

8 (2) On the first day of July, two thousand three: Division of culture and history; division of motor vehicles; division of environmental protection; and school building authority.

11 (3) On the first day of July, two thousand four: Division of personnel; division of rehabilitation services; and workers’ compensation.

14 (4) On the first day of July, two thousand five: Parkways, economic development and tourism authority; department of tax and revenue; and tourism functions within the development office.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

On the first day of July, two thousand two: Purchasing division within the department of administration.

On the first day of July, two thousand three: Office of judges in workers’ compensation.

§4-10-5. Termination of agencies following preliminary performance reviews.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a preliminary performance review has been conducted upon the agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Tree fruit industry self improvement assessment program.

(4) On the first day of July, two thousand: Terms of family law master and family law master system.

(5) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation; public employees insurance agency; personal assistance service
program; records management and preservation board; office of water resources of the division of environmental protection; facilities protection division; West Virginia contractor licensing board; women's commission; ethics commission; veterans' council; educational broadcasting authority; division of protective services; investment management board and state rail authority.

(6) On the first day of July, two thousand three: Driver's licensing advisory board; West Virginia commission for national and community service; West Virginia's membership in the southern regional education board; bureau of senior services; public employees insurance agency finance board; state police; oil and gas inspector's examining board; advisory council on public health; office of explosives and blasting; office of coalfield community development; workers' compensation appeal board; care home advisory board; holocaust education commission; governors' office of fiscal analysis and management; marketing and development division of the department of agriculture; manufactured housing construction and safety board; and environmental quality board.

(7) On the first day of July, two thousand four: Meat inspection program of the department of agriculture; state board of risk and insurance management; real estate commission; rural health advisory panel; state fire commission; motorcycle safety awareness board; motor vehicle dealers advisory board; interstate commission on uniform state laws; design-build board; center for professional development and interstate commission on the Potomac River basin.

(8) On the first day of July, two thousand five: Board of banking and financial institutions; lending and credit rate board; governor's cabinet on children and families; oil and gas conservation commission; health care authority; and emergency medical services advisory council.
(9) On the first day of July, two thousand six: Family protection services board; medical services fund advisory council; West Virginia stream partners program; Ohio River valley water sanitation commission; state lottery commission; and soil conservation committee.

(10) On the first day of July, two thousand seven: Human rights commission.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, two thousand: State building commission.

(2) On the first day of July, two thousand two: Capitol building commission; racing commission; bureau for child support enforcement; parks section and parks functions of the division of natural resources; and public defender services.

(3) On the first day of July, two thousand three: Commission for the deaf and hard-of-hearing; and public service commission.

(4) On the first day of July, two thousand four: Office of the environmental advocate.

§4-10-5b. Termination of boards created to regulate professions and occupations.
(a) The legislative auditor shall evaluate each board created under chapter thirty of this code to regulate professions and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest, and whether the public interest requires that the board be continued.

(b) The following boards terminate on the date indicated, but no board terminates under this section unless a regulatory board evaluation has been conducted upon the board:

(1) On the first day of July, two thousand one: Board of licensed dietitians.

(2) On the first day of July, two thousand two: Board of examiners for speech language pathology and audiology; board of examiners for registered practical nurses; board of examiners for licensed practical nurses; and board of architects.

(3) On the first day of July, two thousand three: Board of pharmacy; board of dental examiners; board of osteopathy; and massage therapy licensure board.

(4) On the first day of July, two thousand four: Board of examiners of land surveyors; board of landscape architects; and board of registration for foresters.

(5) On the first day of July, two thousand five: Board of social work examiners; board of accountancy; board of veterinary medicine; acupuncture board; and board of medicine.

(6) On the first day of July, two thousand six: Board of examiners in counseling; and board of examiners of psychologists.
(7) On the first day of July, two thousand seven: Board of registration for sanitarians; board of embalmers and funeral directors; board of optometry; and board of respiratory care practitioners.

(8) On the first day of July, two thousand eight: Nursing home administrators board; board of hearing aid dealers; and board of barbers and cosmetologists.

(9) On the first day of July, two thousand nine: Board of physical therapy; board of chiropractic examiners; and board of occupational therapy.

(10) On the first day of July, two thousand ten: Professional firefighters board; board of registration for professional engineers; and radiologic technology board of examiners.

CHAPTER 272

(S. B. 212 — By Senators Bowman, Bailey, Burnette, Jackson, Kessler, Minard, Redd, Rowe, Snyder, Wooton, Boley, Minear and Sprouse)

[Passed March 30, 2001; in effect July 1, 2001. Approved by the Governor.]
That section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-4. Powers and objectives.
§5-11-21. Termination of commission.

§5-11-4. Powers and objectives.

1 The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

§5-11-21. Termination of commission

1 The human rights commission shall terminate on the first day of July, 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.
AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifty-seven, all relating to continuing the purchasing division within the department of administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.
§5A-3-57. Continuation of the division of purchasing.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 There is hereby created the purchasing division of the
2 department of administration for the purpose of establishing
3 centralized offices to provide purchasing, travel and leasing
4 services to the various state agencies.
No person shall be appointed director of the purchasing division unless that person is, at the time of appointment, a graduate of an accredited college or university and shall have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

The provisions of this article shall apply to all of the spending units of state government, except as is otherwise provided by this article or by law: Provided, That the provisions of this article shall not apply to the legislative branch unless otherwise provided or the Legislature or either house thereof requests the director to render specific services under the provisions of this chapter, nor to purchases of stock made by the alcohol beverage control commissioner, nor to purchases of textbooks for the state board of education.

§5A-3-57. Continuation of the division of purchasing.

Pursuant to the provisions of article ten, chapter four of this code, the division of purchasing within the department of administration shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Continuation of the department of health and human resources.

The department of health and human resources shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist until the first day of July, two thousand two, to permit a review of their functions to be undertaken by the joint committee on government operations as part of the full performance evaluation of the department of health and human resources scheduled to continue during the interim of the Legislature in the year two thousand one.
AN ACT to amend article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to continuing the department of tax and revenue.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPERVISION.

§11-1-8. Termination.

1 Pursuant to the provisions of article ten, chapter four of this code, the department of tax and revenue shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section fifty, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-50. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state police 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 277

(S. B. 496 — By Senators Bailey, Burnette, Chafin, Jackson, McCabe, Minard, Redd, Rowe, Wooton and Boley)

[Passed April 6, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article two, chapter seventeen-a 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 continuing the department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That article two, chapter seventeen-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 twenty-four, to read as follows:

ARTICLE 2. DEPARTMENT OF MOTOR VEHICLES.


1 The department of motor vehicles shall terminate on 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 that article.
AN ACT to amend and reenact section six, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section six-b, relating to continuing the rural health advisory panel.

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

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

**ARTICLE 16. HEALTH CARE EDUCATION.**

§18B-16-6. Creation of the West Virginia rural health advisory panel.

§18B-16-6b. Termination of advisory panel.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

(a) The West Virginia rural health advisory panel is hereby created and the rural health initiative advisory panel is hereby terminated as of the first day of July, one thousand nine hundred ninety-five. The advisory panel, which shall be appointed by the governor after consulting with the vice
chancellor, shall consist of one community representative from each of the consortia of primary health care education sites; five members shall be rural health care providers, two of whom shall be representatives of rural health care facilities selected from such lists as may be submitted by associations interested or involved in the provision of rural health care, two of whom shall be physicians engaged in the private practice of rural medicine, and one of whom shall be an advanced nurse practitioner or a nurse midwife with experience in rural health care delivery; the dean or designee from each of the participating health sciences schools, ex officio; one representative from private colleges; one representative from the state college system; one site coordinator; the commissioner of public health, ex officio; and the director of the office of community and rural health services, ex officio. Except for the ex officio members, members of the panel shall serve for staggered three-year terms: Provided, That one third of the initial appointments shall be designated by the governor for one-year terms and one third of the initial appointments shall be designated by the governor for two-year terms.

Members of the advisory panel shall be reimbursed for the cost of reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That members of the panel who are employed by the state of West Virginia shall not be reimbursed for their expenses under the provisions of this section.

(b) The functions and duties of the panel are to recommend policies and procedures to the vice chancellor related to the rural health initiative and to oversee and coordinate implementation of those policies and procedures.

(c) The advisory panel has the power and the duty to recommend rural health care facilities to be established as primary health care education sites. Such recommendation shall
be made to the vice chancellor in accordance with the criteria set forth in section seven of this article. After review of the proposals submitted to the vice chancellor by the schools of medicine pursuant to section eight of this article, the panel’s recommendation shall include an estimation of the costs to be allocated per site from available funds in the university of West Virginia health sciences account in the line item designated for rural health initiative site support.

(d) The advisory panel shall adopt guidelines regarding the application by rural health care facilities for selection as primary health care education sites and shall approve an application form which provides the panel with sufficient information to consider the criteria set forth in section eight of this article. The guidelines and application shall be sent by registered mail to each rural health care facility in the state as soon as practicable after the effective date of this section.

(e) The advisory panel shall provide an ongoing evaluation of the rural health initiative and shall make the reports required under this article.

(f) For purposes of addressing primary care physician and other health care provider recruitment and retention efforts, there is hereby created within the rural health advisory panel a committee on recruitment and retention, which shall include member representatives of health care providers, consumers, members of the advisory panel and the health sciences schools. All member representatives shall be selected by the vice chancellor for health sciences in conjunction with the director of the office of community and rural health. All operational costs of the recruitment and retention committee shall be paid by the rural health advisory panel.
(1) The recruitment and retention committee and the vice chancellor of health sciences, in conjunction with the director of the office of community and rural health services, may facilitate statewide and interagency coordination of the recruitment and retention of primary care physicians and other health care related providers to serve the state of West Virginia.

(2) Such responsibility for and coordination of primary care physician recruitment and retention efforts shall include, but are not limited to, working cooperatively with health care agencies and economic development agencies of the state.

(3) As part of its duties, the recruitment and retention committee shall provide by the thirty-first day of December, one thousand nine hundred ninety-eight, and no less than annually thereafter, a report of its findings to the legislative oversight commission on education accountability and the legislative oversight commission on health and human resources accountability. The report shall address the success of the state’s primary care physician and other health care related provider recruitment and retention efforts, recommendations for improvements in all related areas of recruitment and retention efforts, recommendations for statutory or regulatory changes, as well as any other matters which the recruitment and retention committee or the rural health advisory panel deems relevant to carrying out the intent of this article.

§18B-16-6b. Termination of advisory panel.

The rural health advisory panel shall terminate on the first day of July, two thousand four, 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.
AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of environmental protection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-4. Department of environmental protection continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the department of environmental protection shall continue to exist until the first day of July, two thousand three, unless sooner terminated, continued or reestablished by act of the Legislature.
AN ACT to amend and reenact section seven, article one, chapter twenty-two 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 seven-a, all relating to continuing the office of water resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division.
§22-1-7a. Termination of office of water resources.

§22-1-7. Offices within division.

Consistent with the provisions of this article, the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and
enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles three and four of this chapter;

(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter;

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; and

(7) The office of explosives and blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.

§22-1-7a. Termination of office of water resources.

The office of water resources shall terminate on the first day of July, two thousand two, 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.
CHAPTER 281

(H. B. 2895 — By Delegates Douglas, Kuhn, Butcher, Hatfield, Manchin, Prunty and Leggett)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section four, article seven, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the oil and gas inspectors examining board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. OIL AND GAS INSPECTORS’ EXAMINING BOARD.

§22C-7-4. Termination date.

1 The oil and gas inspectors’ examining board shall terminate
2 on the first day of July, two thousand three, pursuant to the
3 provisions of article ten, chapter four of this code, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.
AN ACT to amend and reenact section four-a, article nine, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the oil and gas conservation commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-4a. Termination of commission.

Pursuant to the provisions of article ten, chapter four of this code, the oil and gas conservation commission shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact section eight, article five, chapter twenty-three 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 seventeen, all relating to continuing the office of judges in workers' compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.
§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge and said office.
§23-5-17. Termination of office of judges.

§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the
Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate. The previously appointed incumbent of that position who was serving on the second day of February, one thousand nine hundred ninety-five, shall continue to serve in that capacity unless subsequently removed as provided for in subsection (b) of this section.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the compensation programs performance council created in section one, article three, chapter twenty-one-a of this code. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of said code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the compensation programs performance council and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee shall be applicable to the chief administrative law judge.

(c) By and with the consent of the commissioner, the chief administrative law judge shall employ administrative law judges and other personnel as are necessary for the proper conduct of a system of administrative review of orders issued
by the workers' compensation division which orders have been objected to by a party and all such employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of the statutes, rules and regulations of the classified service pursuant to article six, chapter twenty-nine of this code. All such additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included within the annual budget of the workers' compensation division.

(e) Subject to the approval of the compensation programs performance council pursuant to subdivisions (b) and (c), section seven, article three, chapter twenty-one-a of this code, the office of judges shall from time to time promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the workers' compensation division pursuant to section one of this article. The office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in article three, chapter twenty-nine-a of said code.

(f) The chief administrative law judge shall continue to have the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep such records and make such reports as are
necessary for disputed claims and exercise such additional powers, including the delegation of such powers to administrative law judges or hearing examiners as may be necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law judge shall make such reports as may be requested of him or her by the compensation programs performance council.

§23-5-17. Termination of office of judges.

The office of judges shall terminate on 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 that article.

CHAPTER 284

(S. B. 449 — By Senators Bowman, Bailey, Burnette, Kessler, Minard, Redd, Rowe and Boley)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten, all relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission membership; chairman; compensation.
§24-1-10. Termination of commission.

*§24-1-3. Commission membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is directed by the provisions of this chapter, chapter twenty-four-a, chapter twenty-four-b and chapter twenty-four-d of this code. The public service commission may sue and be sued by that name. The public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, with not less than ten years' actual work experience in the legal profession as a member of a state bar. No more than two of the commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of this state. The oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor’s will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued. Upon expiration of the terms, appointments are for

*Clerk's Note: This section was also amended by H. B. 2912 (Chapter 262), which passed subsequent to this act.
terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds of a public utility subject to the provisions of this chapter, or who is pecuniarily interested in a public utility subject to the provisions of this chapter, may serve as a member of the commission or as an employee of the commission. Nor may any commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(d) The salaries of members of the public service commission and the manner in which they are paid established by the prior enactment of this section are continued. Effective the first day of July, one thousand nine hundred ninety-six, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty-five thousand dollars to be paid in monthly installments from the special funds in the amounts that follow:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, fifty-two thousand dollars;
(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, ten thousand eight hundred fifty dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, two thousand one hundred fifty dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter on and after the first day of July, one thousand nine hundred ninety-six.

§24-1-10. Termination of commission.

The public service commission shall terminate on 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 that article.

CHAPTER 285

(S. B. 271 — By Senators Bowman, Bailey, Jackson, Redd, Rowe, Boley, Minear and Sprouse)

[Passed March 28, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section thirty-one, article three, chapter twenty-nine of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to continuing the state fire commission.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, 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.

§29-3-31. Termination of the state commission.

Pursuant to the provisions of article ten, chapter four of this code, the state fire commission shall continue to exist until the first day of July, two thousand four, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
That section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 22. STATE LOTTERY ACT.


1 After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state lottery commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state lottery commission shall continue to exist until the first day of July, two thousand six.

CHAPTER 287

(S. B. 450 — By Senators Bowman, Bailey, Burnette, Kessler, Minard, Redd and Rowe)

[Passed April 11, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fifteen, all relating to continuing the board of architects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

§30-12-1. Board of architects.
§30-12-15. Termination of board.

§30-12-1. Board of architects.

In order to safeguard the life, health, property and public welfare of the people of this state and to protect the people against the unauthorized, unqualified and improper practice of architecture, the West Virginia board of architects, heretofore created, shall continue in existence and shall consist of seven members, five of whom shall be architects, appointed by the governor by and with the advice and consent of the Senate, and two of whom shall be lay members, not of the same political party affiliation, appointed by the governor by and with the advice and consent of the Senate. Each member who is an architect shall have been engaged in the active practice of his profession in the state of West Virginia for not fewer than ten years previous to his appointment. The members of the board in office on the date this article takes effect, in the year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. Each member shall be appointed for a term of five years.

The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

Pursuant to the provisions of chapter twenty-nine-a of this code, the board, in addition to the authority, powers and duties
27 granted to it by this article, has the authority to promulgate
28 rules relating to the regulation of the practice of architecture
29 and may include rules pertaining to the registration of archi-
30 tects. Any disciplinary proceedings held by the board shall be
31 held in accordance with the provisions of the administrative
32 procedures act for contested cases pursuant to the provisions of
33 article five of said chapter.

§30-12-15. Termination of board.

1 The board of architects shall terminate on the first day of
2 July, two thousand two, pursuant to the provisions of article ten,
3 chapter four of this code, unless sooner terminated, continued
4 or reestablished pursuant to the provisions of that article.

CHAPTER 288

(S. B. 270 — By Senators Bowman, Bailey, Jackson,
Redd, Rowe, Boley, Minear and Sprouse)

[Passed April 2, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article thirty-four,
chapter thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the board
of respiratory care practitioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.
§30-34-17. Termination.

The board provided for in this article shall terminate pursuant to the provisions of article ten, chapter four of this code on the first day of July, two thousand seven, unless continued pursuant to the provisions of that article by legislation enacted prior to the termination date.

CHAPTER 289

(H. B. 2791 — By Delegates Douglas, Kuhn, Brown, Butcher, DeLong, Prunty and Leggett)

[Passed April 3, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article thirty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the massage therapy licensing board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-12. Termination of board.

The massage therapy licensure board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand three, unless sooner terminated, continued or reestablished pursuant to the provisions of such article.
AN ACT to amend and reenact section three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-four, all relating to continuing the real estate commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records.

§47-12-24. Termination of commission.
executive director and assistants; seal; admissibility of and inspection of records.

There shall be a commission known as the "West Virginia Real Estate Commission", which shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor, by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesperson and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee while acting as such commissioner. In case any commissioner be a candidate for or hold any other public office or be a member of any political committee, his or her office as such commissioner shall ipso facto be vacated. Members to fill vacancies shall be appointed by the governor for the unexpired term. No member may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross immorality or other good cause shown and then only in the manner prescribed by law for the removal by the governor of state elective officers. The governor shall designate one member of the commission as the chairman thereof and the members shall choose one of the members thereof as secretary. Two members of the commission shall constitute a quorum for the conduct of official business.
(a) The commission shall do all things necessary and convenient for carrying into effect the provisions of this article and may from time to time promulgate reasonable, fair and impartial rules in accordance with the provisions of article three, chapter twenty-nine-a of this code. The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(b) The commission shall employ an executive director and such clerks, investigators and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and to effect its purposes and the commission shall determine the duties and fix the compensation of such executive director, clerks, investigators and assistants, subject to the general laws of the state.

(c) The commission shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission, shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this article shall be open to public inspection under reasonable rules as shall be prescribed by the commission.

§47-12-24. Termination of commission.

The real estate commission shall terminate on the first day of July, two thousand four, 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.
AN ACT to repeal article thirty-three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter sixteen of said code by adding thereto a new article, designated article thirty-eight, relating to the tattoo studio business.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 38. TATTOO STUDIO BUSINESS.

§16-38-1. Definitions.
§16-38-2. Studio sanitation.
§16-38-3. Operation standards.
§16-38-4. Facilities and equipment.
§16-38-5. Disposal of waste.
§16-38-6. Registration requirements; inspections by local or regional boards of health; permit fees.
§16-38-7. Violations and penalties.

§16-38-1. Definitions.
(a) "Adequate ventilation" means a free and unrestricted circulation of fresh air throughout the tattoo studio and the expulsion of foul or stagnant air.

(b) "Minor" means any person under the age of eighteen years.

(c) "Tattoo" means to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

(d) "Tattoo studio" means any room or space where tattooing is practiced or where the business of tattooing or any part thereof is conducted.

(e) "Antibacterial solution" means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled.

(f) "Germicidal solution" means any solution which destroys germs and is so labeled.

(g) "Sterilization" means holding in an autoclave for twenty-five minutes at fifteen pounds pressure at a temperature of two hundred fifty degrees Fahrenheit or one hundred twenty-one degrees Celsius.

§16-38-2. Studio sanitation.

(a) The tattoo artist's hands shall be washed and then air blown or dried by single-use towel prior to beginning work on each person or when interrupted in the process of working on a person. In addition, disposable latex examination gloves shall be worn by the tattoo artist during the tattooing process. The gloves shall be changed and properly disposed of each time there is an interruption in the application of the tattoo, each
time the gloves become torn or punctured or whenever the
ability of the gloves to function as a barrier is compromised.

(b) Cabinets for the storage of instruments, dyes, pigments,
single-use articles, carbon, stencils and other utensils shall be
provided for each operator and shall be maintained in a sanitary
manner.

(c) Bulk single use articles shall be commercially packaged
and handled in such a way as to protect them from contamina-
tion. Storage of single-use articles may not be in toilet rooms or
in vestibules of toilet rooms nor under nonpotable water lines
or exposed sewer lines.

(d) Work tables and chairs or benches shall be provided for
each tattoo artist. The surface of all work tables and chairs or
benches shall be constructed of material which is smooth, light
colored, nonabsorbent, corrosive-resistant and easily sanitized.
The work tables and chairs or benches shall be sanitized with a
germicidal solution after each tattoo application. All existing
tattoo studios on the effective date of the administrative
regulation shall be exempt from the required color of the work
table.

(e) All materials applied to human skin shall be from
single-use articles or transferred from bulk containers to single-
use containers and shall be disposed of after each use.

(f) No pets, including working dogs, guide dogs or security
dogs from a certified trainer, may be permitted in a tattoo studio
workroom as defined in subsection (b), section four of this
article.

§16-38-3. Operation standards.

(a) Records. –
(1) Proper records of tattoos administered shall be maintained for each patron by the holder of the studio registration;

(2) A record shall be prepared for each patron prior to any procedure being performed and shall include the patron’s name and signature, address, age, date tattooed, design of the tattoo, location of the tattoo on the patron’s body and the name of the tattoo artist who performed the work;

(3) Record entries shall be in ink or indelible pencil and shall be available for examination by the inspecting authorities provided in section six of this article;

(4) Before tattoo administration, the owner or tattoo artist shall discuss with the patron the risks involved in the tattoo requested and the possible complications, which shall be entered in the record;

(5) All records required by this section shall be kept on file for five years by the holder of the studio registration for the studio in which the tattoo was performed.

(b) Consent.

(1) Prior written consent for tattooing of minors shall be obtained from one parent or guardian;

(2) All written consents shall be kept on file for five years by the holder of the studio registration for the tattoo studio in which the tattoo was performed;

(3) The person receiving the tattoo shall attest to the fact that he or she is not intoxicated or under the influence of drugs or alcohol.

(c) Tattooing procedures.
(1) Printed instructions on the care of the skin after tattooing shall be given to each patron as a precaution to prevent infection;

(2) A copy of the printed instructions shall be posted in a conspicuous place, clearly visible to the person being tattooed;

(3) Each tattoo artist shall wear a clean outer garment, i.e., apron, smock, T-shirt, etc.;

(4) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough, jaundice, draining or open skin infections such as boils which could be indicative of more serious conditions such as, but not limited to, impetigo, scabies, hepatitis-b, HIV or AIDS shall refrain from tattooing activities until such time as they are no longer experiencing or exhibiting the aforementioned symptoms;

(5) Before working on each patron, the fingernails and hands of the tattoo artist shall be thoroughly washed and scrubbed with hot running water, antibacterial soap and an individual hand brush that is clean and in good repair;

(6) The tattoo artist's hands shall be air blown dried or dried by a single-use towel. In addition, disposable latex examination gloves shall be worn during the tattoo process. The gloves shall be changed each time there is an interruption in the tattoo application, the gloves become torn or punctured or whenever their ability to function as a barrier is compromised;

(7) Only sterilized or single-use, disposable razors shall be used to shave the area to be tattooed;

(8) Immediately prior to beginning the tattoo procedure, the affected skin area shall be treated with an antibacterial solution;
(9) If an acetate stencil is used by a tattoo artist for transferring the design to the skin, the acetate stencil shall be thoroughly cleaned and rinsed in a germicidal solution for at least twenty minutes and then dried with sterile gauze or dried in the air on a sanitized surface after each use;

(10) If a paper stencil is used by a tattoo artist for transferring the design to the skin, the paper stencil shall be single-use and disposable;

(11) If the design is drawn directly onto the skin, the design shall be applied with a single-use article only.

(d) Dyes or pigments. –

(1) Only nontoxic sterile dyes or pigments shall be used and shall be prepared in sterilized or disposable single-use containers for each patron;

(2) After tattooing, the unused dye or pigment in the single-use containers shall be discarded along with the container;

(3) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(e) Sterilization of needles. –

(1) A set of individual, sterilized needles shall be used for each patron;

(2) No less than twenty-four sets of sterilized needles and tubes shall be on hand for the entire day or night operation. Unused sterilized instruments shall be resterilized at intervals of no more than six months from the date of the last sterilization;
(3) Used, nondisposable instruments shall be kept in a separate, puncture resistant container until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(4) If used instruments are ultrasonically cleaned prior to being placed in the used instrument container, they shall be ultrasonically cleaned and then rinsed under running hot water prior to being placed in the used instrument container;

(5) The ultrasonic unit shall be sanitized daily with a germicidal solution;

(6) If used instruments are not ultrasonically cleaned prior to being placed in the used instrument container, they shall be kept in a germicidal or soap solution until brush scrubbed in hot water and soap and then sterilized by autoclaving;

(7) All nondisposable instruments, including the needle tubes, shall be sterilized and shall be handled and stored in such a manner as to prevent contamination. Instruments to be sterilized shall be sealed in bags made specifically for the purpose of autoclave sterilization and shall include the date of sterilization. If nontransparent sterilization bags are utilized, the bag shall also list the contents;

(8) Autoclave sterilization bags, with a color code indicator which changes color upon proper steam sterilization, shall be utilized during the autoclave sterilization process;

(9) Instruments shall be placed in the autoclave in such a manner as to allow live steam to circulate around them;

(10) No rusty, defective or faulty instruments shall be kept in the studio.

(f) Aftercare of tattoo. –
The completed tattoo shall be washed with a single-use towel saturated with an antibacterial solution.

§16-38-4. Facilities and equipment.

(a) General physical environment. –

(1) Tattoo studios shall have at least fifty footcandles of light and adequate ventilation. Walls and ceilings shall be painted a light color;

(2) The floor of the tattoo workroom shall be constructed of impervious material. The floor shall be swept and wet-mopped daily. Floors, walls or ceilings shall not be swept or cleaned while tattooing is in operation;

(3) Convenient, clean and sanitary toilet and hand-washing facilities shall be made accessible to customers;

(4) The building and equipment shall be maintained in a state of good repair at all times. The studio premises shall be kept clean, neat and free of litter and rubbish.

(b) Workroom. –

(1) Each tattoo studio shall have a workroom separate from a waiting room or any room or rooms used for any other purpose. The workroom may not be used as a corridor for access to other rooms. Patrons or customers shall be tattooed only in the workroom;

(2) The workroom shall be equipped with hot and cold running water, with one sink or basin per artist operating at the same time;

(3) The sinks and basins shall be for the exclusive use of the tattoo artists for washing their hands and preparing customers for tattooing. They shall be equipped with foot, wrist or single-
lever action controls, soap, a germicidal solution, single-use
towels and individual hand brushes clean and in good repair for
each tattoo artist. All plumbing shall be in compliance with
industry standards;

(4) Persons may not consume any food or drink nor smoke
in the workroom.

§16-38-5. Disposal of waste.

The tattoo studio operator shall comply with rules promul-
gated by the commissioner of the bureau of public health
regarding the disposal of medical wastes.

§16-38-6. Registration requirements; inspections by local or
regional boards of health; permit fees.

(a) Tattoo studios in West Virginia shall obtain a West
Virginia business registration certificate and shall register with
their local or regional board of health.

(b) Each local or regional board of health shall conduct
annual inspections of each tattoo studio to determine compli-
ance with this article. Every person, firm or corporation
operating a tattoo studio in West Virginia shall apply to their
local or regional board of health for the inspection. The local or
regional boards of health shall attempt to conduct the inspec-
tions within ten days of the receipt of the request for inspection:
Provided, That if it is impracticable for the local or regional
board of health to conduct the investigation within ten days
after receiving the application, the boards may issue to the
applicant a temporary operating permit which shall be valid for
thirty days or until a regular inspection is made, whichever
occurs first.

(c) Upon a determination by the inspecting authority that
any tattoo studio is not in compliance with the provisions of this
article, the inspection authority shall have the power to order
the tattoo studio to cease operations until a time as the inspect-
ing authority determines that the studio is in compliance.

(d) Upon a determination by the inspecting authority that
the tattoo studio is in compliance with the provisions of this
article, there shall be issued to the studio an operating permit
that shall be posted in a conspicuous place, clearly visible to the
general public.

(e) The fee for the issuance of an operating permit issued
pursuant to this article shall be two hundred dollars and shall be
paid by the tattoo studio receiving the permit. The fee shall be
collected by and paid to the local or regional boards of health.

§16-38-7. Violations and penalties.

Any owner of a tattoo studio who does not obtain a West
Virginia business registration certificate, who does not register
with their local or regional board of health or who fails to
request an inspection pursuant to section six of this article shall
be guilty of a misdemeanor and, upon conviction thereof, for a
first offense, may have all of the tattoo equipment and para-
phernalia confiscated and shall be fined one hundred dollars.
For a second offense, which is a misdemeanor, the owner may
have all of the tattoo equipment and paraphernalia confiscated
and shall be fined not less than five hundred dollars nor more
than one thousand dollars or confined in a county or regional
jail not less than ten days nor more than one year, or both fined
and imprisoned. For a third offense, which is a misdemeanor,
the owner shall have all the tattoo equipment and paraphernalia
confiscated, shall be fined not less than one thousand dollars
nor more than five thousand dollars, or confined in a county or
regional jail not less than thirty days nor more than one year, or
both fined and imprisoned.
AN ACT to amend article six-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend and reenact section two-o, article thirteen of said chapter, all relating to clarifying and specifying the tax treatment of certain wind power projects; specifying the valuation of wind power turbines and related towers for property tax purposes; and specifying the taxable generating capacity of generating units used for the production of electricity by wind for state business and occupation tax purposes.

Be it enacted by the Legislature of West Virginia:

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

Article

6A. Pollution Control Facilities Tax Treatment.

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

§11-6A-5a. Wind power projects.
(a) Notwithstanding any other provisions of this article, a power project designed, constructed or installed to convert wind into electrical energy shall be subject to the provisions of this section.

(b) Each wind turbine installed at a wind power project and each tower upon which the turbine is affixed shall be considered to be personal property that is a pollution control facility for purposes of this article and all of the value associated with the wind turbine and tower shall be accorded salvage valuation. All personal property at a wind power project other than a wind turbine and tower shall be valued without regard to this article.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2o. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

(a) Definitions. — As used in this section:

(1) “Average four-year generation” is computed by dividing by four the sum of a generating unit’s net generation, expressed in kilowatt hours, for calendar years one thousand nine hundred ninety-one, one thousand nine hundred ninety-two, one thousand nine hundred ninety-three, and one thousand nine hundred ninety-four. For any generating unit which was newly installed and placed into commercial operation after the first day of January, one thousand nine hundred ninety-one and prior to the effective date of this section, “average four-year generation” is computed by dividing the unit’s net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this section by the number of months in the period and multiplying the resulting amount by twelve with the
result being a representative twelve-month average of the unit's net generation while in an operational status.

(2) "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

(3) "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

(4) "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of state or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times eight thousand seven hundred sixty hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least twelve consecutive months with the intent that the unit will not thereafter be returned to active service.
(9) “Taxable generating capacity” means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) “Net generation” for a period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this state during the period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during the period to a plant location of a customer engaged in manufacturing activity if the contract demand at the plant location exceeds two hundred thousand kilowatts per hour in a year or where the usage at the plant location exceeds two hundred thousand kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during the period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;

(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during the period by subsection (b), section two-n of this article.

(b) Rate of tax. — Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:
(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of twenty-two dollars and seventy-eight cents multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, subject to the modifications set forth in subsection (c) of this section: Provided, That with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after the thirty-first day of January, one thousand nine hundred ninety-six, be equal to the product of twenty dollars and seventy cents multiplied by the taxable generating capacity of the units, subject to the modifications set forth in subsection (c) of this section: Provided, however, That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at the plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at the plant location exceeds two hundred thousand kilowatts per hour in a year, in no event shall the tax imposed by this article with respect to the sale or use of the electricity exceed five hundredths of one cent times the kilowatt hours sold to or used by a plant engaged in a manufacturing activity; and

(2) For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer, nineteen hundredths of one cent times the kilowatt hours of electricity sold to consumers in this state that were not generated or produced in this state by the taxpayer, except that the rate shall be five hundredths of one cent times the kilowatt hours of electricity not generated or produced in this state by the taxpayer which is sold to a plant location in this state of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year. The measure of tax under this subdivision (2) shall be equal to the
total kilowatt hours of electricity sold to consumers in the state
during the taxable year, that were not generated or produced in
this state by the taxpayer, to be determined by subtracting from
the total kilowatt hours of electricity sold to consumers in the
state the net kilowatt hours of electricity generated or produced
in the state by the taxpayer during the taxable year. For the
purposes of this subdivision, net kilowatt hours of electricity
generated or produced in this state by the taxpayer includes the
taxpayer’s pro rata share of electricity generated or produced in
this state by a partnership or limited liability company of which
the taxpayer is a partner or member. The provisions of this
subdivision (2) shall not apply to those kilowatt hours exempt
under subsection (b), section two-n of this article. Any person
taxable under this subdivision (2) shall be allowed a credit
against the amount of tax due under this subdivision (2) for any
electric power generation taxes or a tax similar to the tax
imposed by subdivision (1) of this subsection (b) paid by the
taxpayer with respect to the electric power to the state in which
the power was generated or produced. The amount of credit
allowed may not exceed the tax liability arising under this
subdivision (2) with respect to the sale of the power.

(c) The following provisions are applicable to taxpayers
subject to tax under subdivision (1), subsection (b) of this
section:

(1) Retired units; inactive reserve. — If a generating unit is
retired from service or placed in inactive reserve, a taxpayer
may not be liable for tax computed with respect to the taxable
generating capacity of the unit for the period that the unit is
inactive or retired. The taxpayer shall provide written notice to
the joint committee on government and finance, as well as to
any other entity as may be otherwise provided by law, eighteen
months prior to retiring any generating unit from service in this
state.
(2) New generating units. — If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit’s taxable generating capacity shall equal forty percent of the official capability of the unit: Provided, That the taxable generating capacity of a county or municipally-owned generating unit shall equal zero percent of the official capability of the unit and the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal five percent of the official capability of the unit.

(3) Peaking units. — If a peaking unit is placed in initial service on or after the effective date of this section, the generating unit’s taxable generating capacity shall equal five percent of the official capability of the unit: Provided, That the taxable generating capacity of a county or municipally-owned generating plant shall equal zero percent of the official capability of the unit.

(4) Transfers of interests in generating units. — If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of the unit in the determination of the taxpayer’s tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer may not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of the transferred unit.

(5) Proration, allocation. — The tax commissioner shall promulgate rules in conformity with the provisions of article three, chapter twenty-nine-a of this code to provide for the administration of this section and to equitably prorate taxes for a taxable year in which a generating unit is first placed in service, retired or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit, to equitably allocate and reallocate adjustments to net generation,
and to equitably allocate taxes among multiple taxpayers with interests in a single generating unit, it being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity.

So as to provide for an orderly transition with respect to the rate making effect of this section, those electric light and power companies which, as of the effective date of this section, are permitted by the West Virginia public service commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of business and occupation tax expense under this article shall be permitted, until the time that action pursuant to a rate application or order of the commission provides for appropriate alternative rate making treatment for such expense, to recover the tax expense imposed by this section by means of deferred accounting to the extent that the tax expense imposed by this section exceeds the level of business and occupation tax under this article currently allowed in rates.

(6) **Electricity generated by manufacturer or affiliate for use in manufacturing activity.** — When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity generating unit or units producing the electricity so used are owned by the manufacturer, or by a member of the manufacturer’s controlled group, as defined in section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity may not be taxable under this article: Provided, That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The department of tax and revenue shall promulgate rules in
accordance with article three, chapter twenty-nine-a of the code: Provided, however, That the rules shall be promulgated as emergency rules.

(d) Beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or section two-m of this article for every taxable month in one thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivisions (1) and (2) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under this section beginning the first day of June, one thousand nine hundred ninety-five and thereafter.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under this section is equal to or greater than the sum of the power company’s liability for payment of tax under subdivision (3), subsection (a), section two-d of this article and this section, then the company shall pay the tax due under this section and not the tax due under subdivision (3), subsection (a), section two-d of this article and section two-m of this article. If tax liability under this section is less then the tax shall be paid under subdivision (3), subsection (a), section two-d of this article and section two-m and the tax due under this section may not be paid.

(2) Notwithstanding subdivision (1) of this subsection, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight, all electric and light power companies shall determine their liability for payment of tax under this article exclusively under this section.
AN ACT to amend and reenact section two-f, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one; and to amend article thirteen-a of said chapter by adding thereto a new section, designated section three-e, all relating to taxes imposed on subsequent coal products; outlining the tax imposed on producing synthetic fuel from coal; dedicating a certain amount of this tax to the counties where produced; outlining the imposition of a privilege tax on extracting and processing material from a refuse, gob pile or other sources of waste coal to produce coal; exempting electrical co-generation plants; and dedicating this tax to certain county commissions for use in economic development and infrastructure improvements.

Be it enacted by the Legislature of West Virginia:

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

Article

13A. Severance Taxes.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.
§11-13-2f. Manufacturing or producing synthetic fuel from coal.

(a) Rate and measure of tax. — Upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, the amount of the tax shall be equal to fifty cents per ton of synthetic fuel manufactured or produced for sale, profit or commercial use. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to persons outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the tax commissioner as provided in article three, chapter twenty-nine-a of this code.

(b) Definitions. — For purposes of this section:

(1) “Fuel” means material that produces usable heat upon combustion.

(2) “Fuel manufactured or produced from coal” means liquid, gaseous or solid fuels produced from coal, including, but not limited to, such fuels when used as feedstocks.
(3) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on the effective date of this section, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on the effective date of this section. "Synthetic fuel" does not include coke or coke gas.

(4) "Ton" means two thousand pounds.

(c) Credits not allowed against tax. — When determining the amount of tax due under this section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. — The tax commissioner may, in the commissioner's discretion, promulgate an emergency rule, as provided in article three, chapter twenty-nine-a of this code, that clarifies, explains or implements the provisions of this section.

(e) Dedication of proceeds. — The net amount of tax collected for exercise of the privilege taxed under this section shall be deposited into the "Mining and Reclamation Operations Fund" created in the state treasury by section thirty-two, article three, chapter twenty-two of this code: Provided, That the net amount of tax collected in excess of four million dollars, not to exceed two million dollars, shall be dedicated to the counties in which the synthetic fuel plants are domiciled and are producing as of the first day of April, two thousand one: Provided,
however, That the county shall use ninety percent of the funds for use in infrastructure improvement and ten percent of the funds for economic development: Provided further, That the net amount of tax collected in excess of six million dollars, not to exceed two million dollars, shall be equally divided among the remaining counties having no synthetic fuel plants domiciled and producing within their borders as of the first day of April, two thousand one: And provided further, That the county shall first use such moneys for regional jail and correctional authority and county jail expenses with any remainder being subject to county discretion: And provided further, That the net amount of tax collected in excess of eight million dollars shall be dedicated to the general revenue fund: And provided further, That funding provided by taxes pursuant to this section and section three-e, article thirteen-a of this chapter shall be administered by the office of community development.

(f) Effective date. — This section shall take effect upon enactment and the measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.

(g) Expiration date. — The tax imposed in this section shall expire and become void and of no effect for synthetic fuels produced after the thirtieth day of June, two thousand seven.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3e. Imposition of tax on privilege of extracting and recovering material from refuse, gob piles or other sources of waste coal to produce coal.

(a) The Legislature hereby finds and declares the following:

(1) That some mining operations in this state process coal to create a saleable clean coal product.
(2) That the by-product created from processing coal is commonly deposited in what are known as refuse or gob piles.

(3) That, as a result of technological developments and other factors, the material contained in some refuse or gob piles located in this state can be recovered and further processed to produce saleable clean coal.

(4) That, under the existing laws of this state, coal produced from processing material contained in refuse, gob piles, slurry ponds, pond fines or other sources of waste coal would be subject to the annual privilege tax imposed on the severance of coal pursuant to section three, article thirteen-a of this chapter and the minimum severance tax imposed by section three, article twelve-b of this chapter.

Based on the foregoing findings, the Legislature concludes that an incentive to extracting and recovering material contained in refuse, gob piles and other sources of waste coal located in this state and, subsequently processing, washing and preparing this material to produce coal should be implemented to encourage the production of this coal from refuse or gob piles located in this state.

(b) Imposition of tax. – In lieu of: (i) The annual privilege tax imposed on the severance of coal pursuant to section three, article thirteen-a of this chapter; and (ii) the minimum severance tax imposed by section three, article twelve-b of this chapter for the privilege of engaging or continuing within this state in the business of extracting and recovering material from a refuse, gob pile or other sources of waste coal and, subsequently, processing, washing and preparing this extracted or recovered material to produce coal for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising that privilege an annual privilege tax.
(c) **Rate and measure of tax.** – The tax imposed in subsection (b) of this section shall be two and one-half percent of the gross value of the coal so produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(d) **Tax in addition to other taxes.** – The tax imposed by this section applies to all persons extracting and recovering material from refuse, gob piles or other sources of waste coal located in this state and, subsequently, processing, washing and preparing this extracted and recovered material to produce coal for sale, profit or commercial use and shall be in addition to all other taxes imposed by law: *Provided,* That the tax imposed by this section is in lieu of the tax imposed pursuant to section three, article thirteen-a of this chapter and the tax imposed by section three, article twelve-b of this chapter: *Provided, however,* That funding provided by taxes pursuant to this section and section two-f, article thirteen of this chapter shall be administered by the office of community development.

(e) **Exemption.** – That the tax imposed in subsection (b) shall not apply to any electrical power co-generation plant burning material from its wholly owned refuse or gob pile.

(f) **Dedication of taxes collected.** – The taxes collected under the provisions of this section are hereby dedicated to the county commissions of the counties in which the refuse, gob piles or other sources of waste coal are located for use in economic development and infrastructure improvements: *Provided,* That the county shall use ninety percent of the funds for use in infrastructure improvement and ten percent of the funds for economic development.
AN ACT to amend and reenact section seven, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the tax commissioner to waive the requirement that prior approval be given by the tax commissioner for a transfer or sale of property with respect to which a tax credit has been allowed under said article so the transfer or sale will not be treated as a premature disposition of the property under the provisions of section six of said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS, AND AEROSPACE INDUSTRIAL FACILITY INVESTMENTS.


1 (a) Mere change in form of business. — Property may not be treated as disposed of under section six of this article by
reason of a mere change in the form of conducting the business 
as long as the property is retained in a similar industrial 
business or management information services business activity 
in this state and the taxpayer retains a controlling interest in the 
successor business. In this event, the successor business may 
claim the amount of credit still available with respect to the 
industrial facility or facilities transferred or to the eligible 
research and development project or management information 
services facility and the taxpayer (transferor) may not be 
required to redetermine the amount of credit allowed in earlier 
years.

(b) Transfer or sale to successor. — Provided that the tax 
commissioner gives prior approval for a transfer or sale, 
property may not be treated as disposed of under section six by 
reason of any transfer or sale to a successor business which 
continues to operate the industrial facility or management 
information services facility in this state. This requirement for 
prior approval may be waived by the tax commissioner at any 
time prior to, or subsequent to, the transfer or sale. Upon 
transfer or sale, the successor shall acquire the amount of credit 
that remains available under this article for each taxable year 
subsequent to the taxable year of the transferor during which 
the transfer occurred and, for the year of transfer, an amount of 
annual credit for the year in the same proportion as the number 
of days remaining in the transferor’s taxable year bears to the 
total number of days in the taxable year and the taxpayer 
(transferor) shall not be required to redetermine the amount of 
credit allowed in earlier years. In determining whether or not to 
approve a disposition pursuant to this subsection, the tax 
commissioner shall take into account the legislative findings 
and purpose contained in section one of this article in making 
the decision.
AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including construction management within the definition of contracting for sales and use tax purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


1 For the purpose of this article:

2 (a) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.
(b) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(c) "Contracting":

(1) In general. — "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property.

Contracting means and includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(2) Form of contract not controlling. — An activity that falls within the scope of the definition of contracting shall constitute contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(3) Special rules. — For purposes of this definition:

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property
or which adds utility to real property or any part thereof or
which adds utility to a particular parcel of property and is
intended to remain there for an indefinite period of time;

(B) The term “alteration” means, and is limited to, alter-
ations which are capital improvements to a building or structure
or to real property;

(C) The term “repair” means, and is limited to, repairs
which are capital improvements to a building or structure or to
real property;

(D) The term “decoration” means, and is limited to,
decorations which are capital improvements to a building or
structure or to real property;

(E) The term “improvement” means, and is limited to,
improvements which are capital improvements to a building or
structure or to real property;

(F) The term “capital improvement” means improvements
that are affixed to or attached to and become a part of a building
or structure or the real property or which add utility to real
property, or any part thereof, and that last or are intended to be
relatively permanent. As used herein, “relatively permanent”
means lasting at least a year in duration without the necessity
for regularly scheduled recurring service to maintain the capital
improvement. “Regular recurring service” means regularly
scheduled service intervals of less than one year;

(G) Contracting does not include the furnishing of work, or
both materials and work, in the nature of hookup, connection,
installation or other services if the service is incidental to the
retail sale of tangible personal property from the service
provider’s inventory: Provided, That the hookup, connection or
installation of the foregoing is incidental to the sale of the same
and performed by the seller thereof or performed in accordance
with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer.

(H) The term “construction manager” means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a “construction manager” as defined herein shall constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(d) (1) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.
(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly
used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(K) Maintenance or repair of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.
(3) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

e) (1) “Directly used or consumed” in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:
(A) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(B) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for such purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(C) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(D) Tangible personal property or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation
or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(E) Tangible personal property or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(f) "Drugs" includes all sales of drugs or appliances to a purchaser upon prescription of a physician or dentist and any other professional person licensed to prescribe.
(g) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(h) "Generating or producing or selling of electric power" means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(i) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(j) “Management information services” means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information and data management activities, or any combination of these activities, when such activity, or activities, is not subject to regulation by the West Virginia public service commission and the activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether the industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether the industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial
business is owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

(k) "Management information services facility" means a building, or any part thereof, or a complex of buildings, or any part thereof, including the machinery and equipment located therein, that is exclusively dedicated to providing management information services to the owner or operator thereof or to another person.

(l) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(m) "Personal service" includes those:

(1) Compensated by the payment of wages in the ordinary course of employment; and

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(n) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

(o) "Production of natural resources" means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste
disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility. For the natural resources oil and gas, “production of natural resources” means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced. All work performed to install or maintain facilities up to the point of sale for severance tax purposes would be included in the “production of natural resources” and subject to the direct use concept. “Production of natural resources” does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subsection as “production of natural resources”.

(p) “Providing a public service or the operating of a utility business” means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.
(q) "Purchaser" means a person who purchases tangible personal property or a service taxed by this article.

(r) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose.

(s) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale.

(t) "Tax" includes all taxes, interest and penalties levied hereunder.

(u) "Tax commissioner" means the state tax commissioner.

(v) "Taxpayer" means any person liable for the tax imposed by this article.

(w) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(x) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.
(y) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(z) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

CHAPTER 296

(H. B. 2824 — By Delegates Compton, Leach, Kominar, Varner, Michael, Browning and Hall)

[Passed April 10, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from sales tax certain food packages sold to individuals who perform at least two hours of community service for each unit of food purchased; exempting sales of band boosters or other athletic or school booster organizations from sales tax; exempting sales by the division of culture and history of publications entitled "Goldenseal" and "West Virginia History"; exempting soap used at car wash facilities from the consumers sales tax; and exempting commissions received by a travel agency from an out-of-state vendor.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 15. CONSUMERS SALES TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service, in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, the board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the division of motor vehicles and which are subject to the tax imposed by
section four, article three, chapter seventeen-a of this code, or
like tax;

(5) Sales of property or services to churches which make no
charge whatsoever for the services they render: Provided, That
the exemption granted in this subdivision applies only to
services, equipment, supplies, food for meals and materials
directly used or consumed by these organizations and does not
apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a
corporation or organization which has a current registration
certificate issued under article twelve of this chapter, which is
exempt from federal income taxes under Section 501(c)(3) or
(c)(4) of the Internal Revenue Code of 1986, as amended, and
which is:

(A) A church or a convention or association of churches as
defined in Section 170 of the Internal Revenue Code of 1986,
as amended;

(B) An elementary or secondary school which maintains a
regular faculty and curriculum and has a regularly enrolled
body of pupils or students in attendance at the place in this state
where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives
more than one half of its support from any combination of gifts,
grants, direct or indirect charitable contributions or membership
fees;

(D) An organization which has no paid employees and its
gross income from fund raisers, less reasonable and necessary
expenses incurred to raise the gross income (or the tangible
personal property or services purchased with the net income),
is donated to an organization which is exempt from income
60 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

62 (E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

69 (F) For purposes of this subsection:

70 (i) The term “support” includes, but is not limited to:

71 (I) Gifts, grants, contributions or membership fees;

72 (II) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

77 (III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

80 (IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

82 (V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

85 (VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section
(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the
owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The tax commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;
(11) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases, when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and "limited duration" means no more than eighty-four consecutive hours; and

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(15) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes.
under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of mobile homes to be used by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes are subject to tax at the three-percent rate;

(17) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(18) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption applies to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before that date, for months of the lease beginning on or after that date;

(19) Notwithstanding the provisions of section eighteen of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the tax commissioner;

(20) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in
7 U.S.C. §2011 et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §1786;

(21) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(22) Sales of electronic data processing services and related software: Provided, That for the purposes of this subdivision “electronic data processing services” means: (A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (B) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(23) Tuition charged for attending educational summer camps;

(24) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty
percent or more of the value of the corporation, partnership or limited liability company;

(25) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue
for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale;

(26) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

(27) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(28) Sales of or charges for the transportation of passengers in interstate commerce;

(29) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(30) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this
article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(31) Charges for the services of opening and closing a burial lot;

(32) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer’s immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision apply to sales made on or after the first day of July, one thousand nine hundred ninety, and may be claimed without presenting or obtaining exemption certificates: Provided, however, That the farmer shall maintain adequate records;

(33) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision applies to sales made on or after the first day of July, one thousand nine hundred ninety, and may be claimed by presenting to the seller a properly executed exemption certificate;

(34) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of
persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;

(35) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(36) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(37) Sales of services after the thirtieth day of June, one thousand nine hundred ninety-seven, by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer’s representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;
(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;
(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the
purposes of this exemption, artistic performance or artistic
service means and is limited to the conscious use of creative
power, imagination and skill in the creation of aesthetic
experience for an audience present and in attendance and
includes, and is limited to, stage plays, musical performances,
poetry recitations and other readings, dance presentation,
circuses and similar presentations and does not include the
showing of any film or moving picture, gallery presentations of
sculptural or pictorial art, nude or strip show presentations,
video games, video arcades, carnival rides, radio or television
shows or any video or audio taped presentations or the sale or
leasing of video or audio tapes, airshows, or any other public
meeting, display or show other than those specified herein:

Provided, however, That nothing contained herein may be
construed to exempt the sales of tickets from the tax imposed in
this article. The state tax commissioner shall propose a legisla-
tive rule pursuant to article three, chapter twenty-nine-a of this
code establishing definitions and eligibility criteria for asserting
this exemption which is not inconsistent with the provisions set
forth herein: Provided further, That nude dancers or strippers
may not be considered as entertainers for the purposes of this
exemption;

(42) After the thirtieth day of June, one thousand nine
hundred ninety-seven, charges to a member by a membership
association or organization which is exempt from paying
federal income taxes under Section 501(c)(3) or (c)(6) of the
Internal Revenue Code of 1986, as amended, for membership
in the association or organization, including charges to mem-
bers for newsletters prepared by the association or organization
for distribution primarily to its members, charges to members
for continuing education seminars, workshops, conventions,
lectures or courses put on or sponsored by the association or
organization, including charges for related course materials
prepared by the association or organization or by the speaker or
speakers for use during the continuing education seminar,
workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(43) Sales of governmental services or governmental materials after the thirtieth day of June, one thousand nine hundred ninety-seven, by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(44) Direct or subscription sales by the division of natural resources of the magazine currently entitled “Wonderful West Virginia” and by the division of culture and history of the magazine currently entitled “Goldenseal” and the journal currently entitled “West Virginia History”;

(45) Sales of soap to be used at car wash facilities; and

(46) Commissions received by a travel agency from an out-of-state vendor.
(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided, That* the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations, and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided, That* sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the
laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

CHAPTER 297

(Com. Sub. for S. B. 116 — 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.]
tax act as the tobacco products excise tax act; defining terms; applying existing provisions, procedures, requirements and rules to all tobacco products; requiring use of invoice method for the payment of tax on tobacco products other than cigarettes; imposing excise tax on tobacco products other than cigarettes based on a fixed percentage of the wholesale price; dedicating proceeds of tax to general revenue fund; establishing money penalties; imposing certain criminal penalties; declaring certain nontaxed tobacco products to be contraband; providing for seizure and disposition of contraband property and distribution of proceeds; requiring of special study on impact of tax on tobacco products other than cigarettes; and providing effective date of tax on tobacco products other than cigarettes.

_Be it enacted by the Legislature of West Virginia:_

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

Chapter

11. Taxation.

60A. Uniform Controlled Substances Act.

CHAPTER 11. TAXATION.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-1. Short title.

§11-17-2. Definitions.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.
§ 11-17-4a. No tobacco products tax by municipalities or other governmental subdivisions.

§ 11-17-5. How tax paid; stamps; how affixed; violations.

§ 11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.


§ 11-17-19. Penalty for failure to file report when no tax due.

§ 11-17-19a. Criminal penalties.

§ 11-17-19b. Certain tax-not-paid tobacco products declared contraband.

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§ 11-17-23. Special study on impact of tax on tobacco products other than cigarettes.

§ 11-17-1. Short title.

1 This article shall be known, and may be cited, as the "Tobacco Products Excise Tax Act".

§ 11-17-2. Definitions.

1 (a) When used in this article, words, terms and phrases defined in subsection (b) of this section, and any variations thereof required by the context, have the meaning ascribed to them in this section, except where the context indicates a different meaning is intended.

6 (b) Definitions. —

7 (1) "Cigarette" means:

8 (A) Any roll for smoking made, wholly or in part, of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which is made of paper or any substance or material, except tobacco.
(B) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (A) of this subdivision.

(2) "Commissioner" means the state tax commissioner and, where the meaning of the context requires, all deputies or agents and employees duly authorized by him or her.

(3) "Consumer" means a person who receives or in any way comes into possession of tobacco products for the purpose of consuming or giving them away or disposing of them in any way other than by sale, barter or exchange.

(4) "Counterfeit stamp" means any stamp, label or print, indicium or character, that evidences, or purports to evidence, the payment of any tax levied under this article and that has not been printed, manufactured or made by authority of the commissioner, as provided in this article, and has not been issued, sold or circulated by the commissioner.

(5) "Manufacturer" means a person who manufactures or produces a tobacco product.

(6) "Other tobacco product" or "tobacco products other than cigarettes" means snuff and chewing tobacco and any other tobacco product that is intended by the seller to be consumed by means other than smoking and any cigar, pipe tobacco or other tobacco product other than cigarettes.

(7) "Package" means the individual package, box or other container in or from which retail sales of tobacco products are normally made or intended to be made.

(8) "Person" means and includes any individual, firm, association, company, partnership, corporation, joint-stock
company, club, agency, syndicate, limited liability company, other legal entity, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary or conservator, and when used in connection with any penalties imposed by this article, means and includes officers, directors, trustees or members of any firm, copartnership, association, corporation, trust or any other unit acting as a group.

(9) “Place of business” means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train or vending machine.

(10) “Retail dealer” includes every person in this state, other than a wholesaler or subjobber, engaged in the selling of tobacco products at retail to a consumer or to any person for any purpose other than resale.

(11) “Sale” means selling, exchange, transfer of title, barter, gift, offer for sale or distribution or disposition of cigarettes or other tobacco products.

(12) “Sale at retail” or “retail sale” means a sale to a consumer or to any person for any purpose other than resale.

(13) “Sale by wholesaler” means and includes any bona fide transfer of title to tobacco products by a wholesaler for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler’s business.

(14) “Stamp” or “meter impression” means any cigarette stamp or any meter or ink impression or other indicia authorized by the tax commissioner to serve as a stamp and shall be of the design and color as prescribed by the tax commissioner.
(15) "Stamped cigarettes" means that the stamp or meter impression, as required by this article, has been affixed to the bottom of the package of cigarettes.

(16) "Subjobber" or "subjobber dealer" includes any person who purchases stamped cigarettes or tax-paid tobacco products from a wholesaler or from any other person who purchases from the manufacturer or importer and who purchases the tax-paid tobacco products solely for the purpose of bona fide resale to retail dealers.

(17) "Tax-not-paid tobacco product" means a tobacco product upon which the tax imposed by this article has not been paid.

(18) "Tax-paid tobacco products" means a tobacco product upon which the tax imposed by this article has been paid.

(19) "Tobacco product" includes cigarettes and any other tobacco product.

(20) "Transportation company" means a person operating or supplying to common carriers, cars, boats or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(21) "Transporter" means a person importing or transporting into this state a tobacco product obtained from a source located outside this state or transporting within this state tobacco products belonging to another person.

(22) "Unstamped cigarettes" means that the stamp or impression as required by this article has not been affixed to the bottom of the package of cigarettes.

(23) "Vending machine operator" means any person operating one or more vending machines for the sale of tobacco
products. The sale of tobacco products through a vending machine will be construed as sales at retail and subjects the vending machine operator to this article and rules pertaining to retail dealers.

Whenever any tobacco products vending machine operator purchases tax-not-paid tobacco products directly from the manufacturer or any other person, the vending machine operator shall be considered to be a wholesaler and is liable for payment of the excise tax imposed by this article and the affixing of the required stamps.

(24) "Wholesale price" means the gross invoice price, including all federal excise taxes, at which the manufacturer of the tobacco product sells the tobacco product to unaffiliated distributors, excluding all trade discounts and other reductions in the manufacturer’s price. If the taxpayer buys from other than a manufacturer, "wholesale price" means the gross invoice price, including all federal excise taxes and excluding all trade discounts and other similar reductions in price.

(25) "Wholesaler" or "wholesale dealer" includes any person in this state who purchases tax-not-paid tobacco products directly from the manufacturer, or such other seller as may be approved by the tax commissioner. Any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports tax-not-paid tobacco products into this state, or that causes tax-not-paid tobacco products to be imported or transported into this state is a wholesaler liable for the tax imposed under this article and, in the case of cigarettes purchased, is liable for affixing tax indicia in accordance with the requirements of this article. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the tax commissioner.

§11-17-3. Levy of tax; ratio; dedication of proceeds.
(a) Tax on cigarettes. — For the purpose of providing revenue for the general revenue fund of the state, an excise tax is hereby continued on sales of cigarettes at the rate of seventeen cents on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(b) Tax on tobacco products other than cigarettes. — Effective the first day of January, two thousand two, an excise tax is hereby levied and imposed on the sale or use of other than cigarettes tobacco products at a rate equal to seven percent of the wholesale price of each article or item of tobacco product other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection. Revenues received from this tax shall be deposited into the general revenue fund.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.

(a) Notwithstanding other provisions of this article, it is hereby declared to be the intent of the Legislature that one rate of excise tax is applicable to all quantities of cigarettes and another rate of excise tax is applicable to all tobacco products other than cigarettes in this state on and after the first day of July, two thousand one, under the provisions of this article. Any tobacco products, on hand or in inventory, on the effective date of any rate change are hereby considered to have been purchased or received on the effective date of the change in rate.

(b) Every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine operator who, on the effective date of any rate change, has, on hand or in inventory, any tobacco products, upon which the tax or any portion of the tax has been
previously paid, shall take a physical inventory and shall file a report of the inventory with the tax commissioner, in the format required by the tax commissioner, within thirty days after the inventory, and shall pay to the tax commissioner, at the time of filing the report, any additional tax due under an increased rate. A discount of four percent shall be allowed on all tax due for persons who pay additional tax under this section.

(c) Imposition of the tax on tobacco products other than cigarettes shall be treated as a change in rate on the effective date of the tax.

§11-17-4a. No tobacco products tax by municipalities or other governmental subdivisions.

No municipality or governmental subdivision shall levy any excise or other tax on any tobacco product, or require cigarettes or other tobacco products to be stamped, or require licenses for sale thereof, other than licenses which may be required in accordance with section four, article twelve of this chapter.

§11-17-5. How tax paid; stamps; how affixed; violations.

(a) The tax imposed by this article on cigarettes shall be paid by the purchase of stamps as provided in this article.

(b) The tax imposed by this article on tobacco products other than cigarettes shall be paid using an invoice method prescribed by the tax commissioner.

(c) Payment for stamps purchased from the commissioner shall be made by cash, money order, bank draft, certified check or by noncertified check. However, in the event a noncertified check is returned unpaid by its bank, then it shall be considered that payment has not been made for the taxes due.
(d) A stamp, as required by this article, as described in the rules promulgated under this article by the tax commissioner in accordance with article three, chapter twenty-nine-a of this code, shall be affixed to or impressed upon each package of cigarettes of an aggregate value of not less than the amount of tax upon the contents of the package. The stamp or impression that is affixed is prima facie evidence of payment of the tax imposed by this article. Stamps or meter impressions shall be purchased from the commissioner or his or her deputy, by, and paid for by, wholesalers.

(e) Except as may be otherwise provided in the rules prescribed by the commissioner, under authority of this article and article ten of this chapter, and unless the stamps have been previously affixed, they shall be affixed by each wholesale dealer who must be authorized to do business in this state prior to the sale or delivery of any cigarettes to any retail dealer or subjobber in this state.

(f) Except as may be otherwise provided in the rules prescribed by the commissioner, each wholesale dealer of tobacco product of shall be authorized to do business in this state prior to the sale or delivery of any tobacco products to any retail dealer or subjobber in this state. A wholesale dealer may sell tax-paid tobacco products only to another wholesaler or a retail dealer or subjobber in this state. No wholesaler or other person may purchase tax-not-paid tobacco products from any seller not approved by the tax commissioner.

(g) Whenever any cigarettes are found in the place of business of any retail dealer or subjobber without the stamps affixed, the prima facie presumption shall arise that the cigarettes are kept in the place of business in violation of the provisions of this article.
(h) Whenever any tobacco products other than cigarettes are found in the place of business of any retail dealer or subjobber and there is no evidence that the tax imposed by this article has been paid on the tobacco products other than cigarettes, it shall be presumed that the tobacco products other than cigarettes are kept on the premises in violation of this article.

(i) If the tax commissioner determines that it is practicable to stamp packages of cigarettes by impression by means of a metering device, then the commissioner shall provide that the metering device and its impression may be used in lieu of the stamps otherwise required by law. The tax commissioner may authorize any wholesaler purchasing tobacco products, who holds a valid business registration certificate, as required by article twelve of this chapter, to use any metering device approved by the commissioner after the device has been sealed by the commissioner or a deputy, or agent, authorized by the commissioner. A metering device shall be used only in accordance with the rules prescribed by the commissioner.

(j) A wholesaler may elect to pay the tax in advance when a metering device is used, in which event the wholesaler shall deliver the metering device to the commissioner, or his or her agent authorized for that purpose, who shall seal the meter in accordance with the prepayment that was made.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

(a) Due date. — On or before the fifteenth day of each month, manufacturers, importers, common carriers, wholesalers, subjobbers, retail dealers and agents or vending machine operators shall, when required by this article, or the tax commissioner, file a report covering the business transacted in the previous month providing any information the commissioner determines necessary for the ascertainment or assessment of the
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taxes imposed by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by the tax commissioner. The amount of tax shown to be due on the monthly report, if any, shall be remitted by the due date of the monthly report, determined without regard to any authorized extension of time for filing the report.

(b) Reports required. — The reports prescribed in this article are required, although a tax might not be due or no business transacted, for the period covered by the report.

(c) Records. — Each person required to file a report under this article shall make and keep the records necessary to substantiate the accuracy of the reports required by this article, including, but not limited to, records of inventories, receipts, disbursements and sales. Records shall be retained for a period of time not less than three years, unless the tax commissioner gives written consent to their earlier destruction.

(d) Contents of delivery ticket or invoice. — Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of tobacco products must be recorded upon a serially numbered invoice showing: (1) The name and address of the seller and the purchaser; (2) the point of delivery; (3) the date, quantity and price of each tobacco product delivered in this state; (4) the amount of tax imposed by this article, which must be set out separately or the invoice must indicate whether or not the West Virginia tobacco products excise tax is included in the total price; and (5) any other reasonable information required by the tax commissioner. However, these invoicing requirements do not apply to cash sales: Provided, That the person making the cash sales shall maintain the records reasonably necessary to substantiate the accuracy of his or her monthly report.
(e) Inspection of tobacco products inventory. — In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the tax commissioner, or a deputy or agent authorized by the commissioner, may inspect or examine the stock of tobacco products kept in and upon the premises of any person where tobacco products are placed, stored or sold and shall inspect or examine the records, books, papers and any equipment or records of manufacturers, importers, cigarette stamping agents, wholesalers, subjobbers, retail dealers, common carriers or any other person for the purpose of determining the quantity and value of tobacco products acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the tax imposed by this article has been properly paid.

(f) Examination of witnesses and records. — In addition to the tax commissioner’s powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a manufacturer, importer, common carrier, wholesaler, subjobber or retailer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner and any duly appointed agent may examine witnesses under oath; and if the witness fail or refuse at the request of the tax commissioner or any duly appointed agent to grant access to the books, records or papers, the tax commissioner or the agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and court shall thereupon issue summons to the party to appear before the tax commissioner or any duly appointed agent, at a place designated within the jurisdiction of the court, on a day fixed, to be continued as the occasion may require for good cause shown and give evidence and lay open for inspection any books and papers that may be required for the purpose of ascertaining the amount of tax and reports due, if any.

All rules for the cigarette tax act previously promulgated by
the commissioner, as provided in this article, article ten of this
chapter and article three, chapter twenty-nine-a of this code,
remain in effect until they are amended or repealed by the
commissioner or superceded by operation of law.

§11-17-19. Penalty for failure to file report when no tax due.

In the case of any failure to make or file a report when no
tax is due, as required by this article on the date prescribed for
filing, unless it be shown that the failure was due to reasonable
cause and not due to willful neglect, there shall be collected a
penalty of twenty-five dollars for each month of the failure or
fraction of a month.

§11-17-19a. Criminal penalties.

(a) Misdemeanor penalties. — If any person commits any
act set forth in this subsection, the person shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
less than one thousand dollars nor more than twenty-five
thousand dollars, or imprisoned in a county or regional jail for
not more than one year, or both fined and imprisoned. Each act
constitutes a separate misdemeanor:

(1) The person makes any false entry upon an invoice,
package or container of tobacco products that is required to be
made under the provisions of this article;

(2) The person with intent to evade the tax imposed by this
article, presents any false entry upon an invoice, package or
container of tobacco products for the inspection of the commis-
sioner or the commissioner’s authorized deputy, agent or
employee;

(3) The person prevents or hinders the commissioner or the
commissioner’s authorized deputy, agent or employee from
making a full inspection of any place where tobacco products subject to the tax imposed by this state are sold or stored;

(4) The person prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(5) The person sells cigarettes in this state without there having been first affixed to each individual package of cigarettes the stamp or meter impression required to be affixed to the package by this article;

(6) The person sells other tax-not-paid tobacco products in this state to a subjobber, retail dealer or consumer in this state;

(7) The person, being a retail dealer or subjobber in this state, has in his or her possession packages of cigarettes not bearing the stamps or meter impression required to be affixed to the package by this article;

(8) The person, being a retail dealer or subjobber in this state, has in his or her possession tax-not-paid packages of other tobacco products;

(9) The person fails to produce on demand by the commissi- sioner, or the commissioner’s authorized deputy, agent or employee, invoices of all tobacco products purchased or received by him or her within two years prior to the date of the demand, unless upon satisfactory proof it is shown that the nonproduction is due to providential or other causes beyond his or her control;

(10) The person being a wholesale dealer sells tobacco products to any person in this state other than to another wholesaler, or to a subjobber or retail dealer;
(11) A person who is not a wholesaler or subjobber in this state sells tobacco products to a retail dealer;

(12) A person being a retail dealer purchases or acquires tobacco products from any person other than a person who is a wholesaler or subjobber in this state;

(13) The original wholesaler who purchases unstamped cigarettes or tax-not-paid other tobacco products from a manufacturer or other person fails to pay the excise tax imposed by this article and fails to affix the required stamps or meter impressions;

(14) A person who is not a wholesaler of tobacco products, as defined in this article, has in his or her possession within this state more than twenty packages of cigarettes, that do not bear cigarette tax paid indicia of this state, stamps or meter impressions, or other tax-not-paid tobacco products, if the retail value of the tobacco products is more than thirty dollars for all tax-not-paid tobacco products. The possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due on the tobacco products;

(15) The person violates any of the provisions of this article or any lawful rule promulgated by the commissioner under authority of article ten of this code.

(b) *Felony penalties.* — If any person commits any act set forth in this subsection, the person shall be guilty of a felony and, upon conviction thereof, shall be fined not less than twenty-five thousand dollars nor more than fifty thousand dollars, and imprisoned in a state correctional facility for a term of not less than one year nor more than five years. Each constitutes a separate felony:
(1) The person falsely or fraudulently makes, forges, alters or counterfeits any stamps or meter impressions prescribed, or defined, by the provisions of this article, or its related rules;

(2) The person knowingly and willfully makes, causes to be made, purchases, receives or has in his or her possession, any device for forging or counterfeiting any stamp or meter impression;

(3) The person has in his or her possession any stamps not properly issued by the commissioner, or the commissioner’s authorized employee, agent or deputy;

(4) The person tampers with or alters any stamping device authorized by the commissioner; or

(5) The person uses more than once any stamp or meter impression provided for and required by this article for the purpose of evading the tax imposed by this article.

(c) Deposit of penalties. -- All penalties collected under the provisions of this section shall be paid into the general revenue fund.

§11-17-19b. Certain tax-not-paid tobacco products declared contraband.

(a) Whenever the commissioner or any of the commissioner’s authorized deputies, agents or employees, or any law-enforcement officer in this state, discovers any tobacco products subject to tax, as provided by this article, and upon which the tax has not been paid, as required by this article, the tobacco products shall thereupon be considered to be contraband, and the commissioner, or the commissioner’s authorized deputy, agent or employee, or any law-enforcement officer in this state, may immediately seize and take possession of the tobacco products without a warrant, and the tobacco products and
related property shall be forfeited to the state as provided in
article seven, chapter sixty-a of this code.

(b) Seizure of contraband shall not be considered to relieve
any person from fine or imprisonment, as provided in section
nineteen-a of this article, for any of the offenses set forth in said
section.

§11-17-19c. Magistrate courts have concurrent jurisdiction.

Magistrates have concurrent jurisdiction with any other
courts having jurisdiction for the trial of all misdemeanors
arising under this article.

§11-17-20. Transportation of unstamped cigarettes or tax-not­paid tobacco products; forfeitures and sales of cigarettes and equipment.

(a) In general. — Every person who transports tax-not-paid
tobacco products upon the public highways, waterways,
airways, roads or streets of this state shall have in his or her
actual possession invoices or delivery tickets for the tobacco
products.

(b) Contents of delivery tickets. — Delivery tickets shall
show: (1) The true name and the complete and exact address of
the consignor or seller; (2) the true name and complete and
exact address of the consignee or purchaser; (3) the quantity
and brands of the tobacco products transported; and (4) the true
name and complete and exact address of the person who has or
shall assume payment of the West Virginia taxes imposed by
this article, or the tax, if any, of the state or foreign country at
the point of ultimate destination: Provided, That any common
carrier which has issued a bill of lading for a shipment of
tobacco products and is without notice to itself or to any of its
agents or employees that the cigarettes are not stamped as
required by this article, or that the tax imposed by this article on
tobacco products other than cigarettes has not been paid, shall be considered to have complied with this article and the vehicle or vessel in which the tax-not-paid tobacco products are being transported is not subject to confiscation under this section or article seven, chapter sixty-a of this code.

(c) In the absence of invoices, delivery tickets or bills of lading, as the case may be, that meet the requirements of subsections (a) and (b) of this section, the tobacco products, the vehicle or vessel in which the tobacco products are being transported and any paraphernalia or devices used in connection with the tax-not-paid tobacco products are declared to be contraband goods and may be seized by the commissioner, or the commissioner's authorized deputies, agents or employees, or by any law-enforcement officer of the state, without a warrant and shall be forfeited to the state as provided in article seven, chapter sixty-a of this code.

§11-17-20a. Criminal penalty for unlawful transportation of tax-not-paid tobacco products.

Any person who transports tax-not-paid tobacco products in violation of section twenty of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars, or imprisoned in the regional or county jail not more than one year, or both fined and imprisoned.

§11-17-20b. Vending machines; presence of tax-not-paid tobacco products.

(a) If tax-not-paid tobacco products are found in any vending machine, both the tax-not-paid tobacco products and the vending machine are contraband goods within the meaning of article seven, chapter sixty-a of this code, and may be seized by the commissioner, at the discretion of the commissioner, or the commissioner's authorized deputies, agents or employees,
or any law-enforcement officer in this state, without a warrant.
The provision of article seven, chapter sixty-a of this code apply to the seizure and disposition of the contraband.

(b) Seizure and sale of the contraband shall not relieve the owner of the property from any action by the commissioner for violations of any other sections of this article.

§11-17-23. Special study on impact of tax on tobacco products other than cigarettes.

(a) The tax commissioner and the commissioner of the bureau of employment programs shall conduct a study to analyze the impact of the provisions of this article on the manufacturers and distributors of tobacco products other than cigarettes and their employees. This study shall include an analysis of the results of taxation of tobacco products other than cigarettes, as provided in this article, as they affect employment, costs of operation and the overall economic impact upon manufacturers and distributors and their employees.

(b) The commissioners shall report the results of the study to the governor and the joint committee on government and finance no later than the first day of February, two thousand three, and shall submit recommendations on how to ameliorate any negative impact upon manufacturers, distributors or employees through proposed tax credits, job training programs, extension of unemployment or other benefits, incentives or other similar solutions.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to forfeiture.
(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or possessed in violation of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

(3) All tax-not-paid tobacco products, as that term is defined in section two, article seventeen, chapter eleven of this code, declared to be contraband under said article;

(4) All property which is used, or has been used, or is intended for use, as a container for property described in subdivision (1), (2) or (3) of this subsection;

(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this subsection, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this chapter; and
(iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this chapter;

(6) All books, records, research products and materials, including formulas, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of this chapter;

(7) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this chapter by any person in exchange for a controlled substance, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which have been used, or which are intended to be used to facilitate any violation of this chapter: Provided, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and

(8) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter punishable by more than one year imprisonment: Provided, That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent.
The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances to the real property.

(b) Property subject to forfeiture under this article may be seized by any person granted enforcement powers in section five hundred one, article five of this chapter (hereinafter referred to as the “appropriate person” in this article).

(c) Controlled substances listed in article two of this chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the controlled substances.

(d) Species of plant from which controlled substances may be derived which have been planted or cultivated in violation of the provisions of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state upon the seizure of the plants.

(e) The failure, upon demand by the appropriate person, or his or her authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(f) Notwithstanding any provision of this article to the contrary, controlled substances listed in article two of this chapter and species of plants from which controlled substances
may be derived shall either be destroyed or used only for investigative or prosecutorial purposes.

(g) Notwithstanding any other provisions of this article to the contrary, any items of real property or any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years next preceding the sale been used in violation of this chapter or that the property is a controlled substance.

CHAPTER 298

(S. B. 174 — By Senator Tomblin, Mr. President, By Request)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend and reenact section eight-e, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-four of said chapter by adding thereto a new section, designated section twenty-three-g, all relating to the application of tax credits for qualified rehabilitation buildings investment; and allowing for the distribution of the credits to owners of the entities earning the credits.

Be it enacted by the Legislature of West Virginia:

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

PART I. GENERAL.

Article  

ARTICLE 21. PERSONAL INCOME TAX.  

§11-21-8e. Carryback, carryforward.  

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by section eight-a of this article which may not be taken in the taxable year to which the credit applies qualifies for carryback and carryforward treatment subject to the identical general provisions under §39, Title 26 of the United States Code, as amended: Provided, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year.

(b) Effective for taxable years beginning on and after the first day of January, two thousand one, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company or multiple owners of property shall be passed through to the shareholders, partners, members or owners, either pro rata or pursuant to an agreement among the shareholders, partners, members or owners documenting an alternative distribution method. The tax commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide the method of reporting the alternative method of distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.  

§11-24-23g. Application of credits.
1 Effective for taxable years beginning on and after the first
day of January, two thousand one, the credits granted, pursuant
to section twenty-three-a of this article, to an electing small
business corporation (S corporation), limited partnership,
general partnership, limited liability company or multiple
owners of property shall be passed through to the shareholders,
partners, members or owners, either pro rata or pursuant to an
agreement among the shareholders, partners, members or
owners documenting an alternative distribution method.
Taxpayers eligible for the credits may transfer, sell or assign the
credits.

CHAPTER 299

(S. B. 405 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 28, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one,
chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to updating the meaning
of certain terms used in the West Virginia personal income tax act
by bringing them into conformity with their meaning for federal
income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-nine, but prior to the first day of January, two thousand one, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand one, shall be given any effect.

(b) Medical savings accounts. — The term "taxable trust" does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not "wages" for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code, and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the tax commissioner as tax collected under this article.
(d) Effective date. — The amendments to this section enacted in the year two thousand one are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, two thousand, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 300

(Com. Sub. for S. B. 447 — By Senators Bowman, Kessler, Edgell and McKenzie)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-d, relating to providing a personal income tax adjustment to the gross income of certain retirees receiving pensions from defined benefit pension plans that terminated and are being paid at a reduced maximum benefit guarantee; and providing a sunset provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

PART I. GENERAL.
§11-21-12d. Additional modification reducing federal adjusted gross income.

In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: Provided, That if the tax commissioner determines that this adjustment reduces the revenues of the state by two million dollars or more in any one year, then the tax commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to two million dollars for the next year. This tax adjustment shall be effective for taxable years beginning on and after the first day of January, two thousand one: Provided, however, That the adjustment shall terminate for the tax years on or after the first day of January, two thousand four. This modification is available regardless of the type of return form filed.

CHAPTER 301

(S. B. 440 — By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

[Passed March 28, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-nine, but prior to the first day of January, two thousand one, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand one, shall be given any effect.
(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the "Federal Tax Reform Act of 1986" was enacted that were not amended or repealed by the "Federal Tax Reform Act of 1986". Except when inappropriate, any references in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand one are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, two thousand, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 302

(Com. Sub. for S. B. 177 — By Senators Craigo, McCabe, Prezioso, Plymale, Oliverio, Sharpe, McKenzie, Sprouse, Boley, Love, Mitchell, Bailey, Anderson, Facemyer, Bowman, Minard, Rowe, Kessler, Redd, Helmick, Ross, Snyder, Minear, Unger, Jackson, Edgell, Hunter, Caldwell, Fanning, Chafin, Tomblin, Mr. President, Deem and Wooton)

[Passed April 14, 2001; in effect July 1, 2001. Approved by the Governor.]
AN ACT to amend article twenty-seven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to phasing out the health care provider tax imposed on gross receipts of services performed by certain practitioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-36. Phase out and elimination of tax on services of individual practitioners.

(a) Effective the first day of July, two thousand one, the rate of the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and five hundred seventy-five thousandths percent; and

(2) Section sixteen of this article is reduced to one and eight-tenths percent; and

(3) Section seven of this article is reduced to four and ninety-five one hundredths percent.

(b) Effective the first day of July, two thousand two, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and four-tenths percent; and
(2) Section sixteen of this article is reduced to one and six-tenths percent; and

(3) Section seven of this article is reduced to four and four-tenths percent.

c) Effective the first day of July, two thousand three, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and two hundred twenty-five thousandths percent; and

(2) Section sixteen of this article is reduced to one and four-tenths percent; and

(3) Section seven of this article is reduced to three and eighty-five hundredths percent.

d) Effective the first day of July, two thousand four, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one and five-hundredths percent; and

(2) Section sixteen of this article is reduced to one and two tenths percent; and

(3) Section seven of this article is reduced to three and three-tenths percent.

e) Effective the first day of July, two thousand five, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to eight hundred seventy-five thousandths percent; and
(2) Section sixteen of this article is reduced to one percent; and

(3) Section seven of this article is reduced to two and seventy-five hundredths percent.

(f) Effective the first day of July, two thousand six, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to seven-tenths percent; and

(2) Section sixteen of this article is reduced to eight-tenths percent; and

(3) Section seven of this article is reduced to two and two-tenths percent.

(g) Effective the first day of July, two thousand seven, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to five hundred twenty-five thousandths percent; and

(2) Section sixteen of this article is reduced to six-tenths percent; and

(3) Section seven of this article is reduced to one and sixty-five hundredths percent.

(h) Effective the first day of July, two thousand eight, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to thirty-five hundredths percent; and
(2) Section sixteen of this article is reduced to four-tenths percent; and

(3) Section seven of this article is reduced to one and one-tenth percent.

(i) Effective the first day of July, two thousand nine, the tax imposed under:

(1) Sections five, six, twelve, thirteen, fourteen, seventeen, eighteen and nineteen of this article is reduced to one hundred seventy-five thousandths percent; and

(2) Section sixteen of this article is reduced to two-tenths percent; and

(3) Section seven of this article is reduced to fifty-five hundredths percent.

(j) Effective the first day of July, two thousand ten, the tax imposed under sections five, six, seven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen and nineteen of this article is eliminated.

CHAPTER 303

(Com. Sub. for S. B. 661 — By Senators Fanning and Ross)

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

AN ACT to amend and reenact section one, article eleven-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four and
five, all relating to providing a limit of two hundred million
dollars on the maximum appeal bond that can be required in
litigation in which an appellant is a signatory to a tobacco
settlement; providing for applicability; and exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLE-
MENT FUNDS.

§4-11A-1. Legislative findings and purpose.
§4-11A-4. Limitation on appeal bond.
§4-11A-5. Applicability.

§4-11A-1. Legislative findings and purpose.

(a) On the twenty-third day of November, one thousand
nine hundred ninety-eight, tobacco product manufacturers
entered into a settlement agreement with the state. This "master
settlement agreement" releases those manufacturers from past,
present and specific future claims against them in return for
payment of annual sums of money to the state, obligates the
manufacturers to change their advertising and marketing
practices and requires the establishment by the manufacturers
of a national foundation for the interests of public health.

(b) The revenues received pursuant to the master settlement
agreement are directly related to the past, present and future
costs incurred by the state for the treatment of tobacco-related
illnesses. The purpose of this article is to preserve the revenues
received from the settlement.
(c) The receipt of funds in accordance with the master settlement agreement shall be deposited only in accordance with the provisions of this article.

(d) West Virginia receives approximately seventy million dollars in revenue each year under the terms of the master settlement agreement with the tobacco manufacturers. This revenue is used to fund programs of vital importance to the people of West Virginia, and the Legislature finds that it is in the best interest of the people of this state to protect these revenues.

§4-11A-4. Limitation on appeal bond.

The bond that any appellant who is a signatory or a successor to a signatory of the master settlement agreement may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with the provisions of section fourteen, article five, chapter fifty-eight of this code and the West Virginia rules of civil procedure: Provided, That an appeal bond may not exceed one hundred million dollars for compensatory damages and all other portions of a judgment other than punitive damages and one hundred million dollars for punitive damages unless the appellee proves by a preponderance of the evidence that the appellant or appellants are purposefully dissipating or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired. For purposes of this section, multiple judgments resulting from cases that have been consolidated or aggregated for purposes of trial proceedings shall be treated as a single judgment.

§4-11A-5. Applicability.

The provisions of section four of this article apply to all actions pending in the courts of this state on the effective date of this section and to any action filed in this state on or after the
Provided, That the provisions of section four of this article providing for the maximum amount of an appeal bond shall not apply in any action brought by any signatory to the master settlement agreement seeking to enforce compliance with the terms of the master settlement agreement or for a breach of the master settlement agreement.

CHAPTER 304

(H. B. 3020 — By Mr. Speaker, Mr. Kiss, and Delegates Compton, Staton, Amores, Hall, Michael and Perdue)

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

AN ACT to amend article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to prohibiting the importation, sale or distribution of bidis tobacco products; defining terms and creating misdemeanor penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.


(a) The Legislature finds that young people in this state have been enticed into smoking or using tobacco products by first using or experimenting with hand-rolled, flavored tobacco products called "bidis" or "beedies." Recognizing that the use
of bidis is an emerging public health problem, the Legislature hereby adopts a public policy that the tobacco products known as "bidis" should not be imported, sold or distributed in the state of West Virginia.

(b) Notwithstanding any other provision of law, no person or business entity shall possess, import, sell, offer for sale or distribute any tobacco product commonly referred to as "bidis" or "beedies."

(c) For purposes of this section, "bidis" or "beedies" means a product containing tobacco that is wrapped in temburni leaf or leaves (diospyros melanoxylon) or tendu leaf or leaves (diospyros exculpra), or any other product or substance that is offered to or purchased by consumers as bidis or beedies. As used in this section, the terms "bidis" and "beedies" have the same meaning and may be used interchangeably.

(d) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars; and upon a second or subsequent conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars for each offense, or confined in a county or regional jail not more than six months, or both.

CHAPTER 305

(S. B. 272 — By Senators Ross, Redd, Caldwell, Kessler, Love, Oliverio, Rowe, Facemyer and McKenzie

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

AN to amend and reenact section sixty-four, article one, chapter seventeen-c of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to excluding certain vehicles carrying children to medical and dental facilities from the definition of “passenger van”.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-64. Passenger van.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by day-care centers, after-school centers and nursery schools: Provided, That the term “passenger van” does not include any van or other motor vehicle which is utilized for the specific purpose of transporting children to medical facilities for the purpose of medical or dental treatment and which loads and unloads the children on private property, making no stops for loading or unloading along public roads or highways.

CHAPTER 306

(S. B. 732 — By Senators Wooton, Caldwell, Minard, Oliverio, Redd, Ross, Rowe, Snyder, Facemyer and McKenzie)
AN ACT to amend and reenact section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter forty-six of said code, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, relating generally to secured transactions; directing the office of debt management to report to the members of the joint committee on government and finance; excluding transfers by a government or governmental unit from application of the article; preventing assignment of the proceeds of a viatical settlement; preventing assignment of the proceeds of a workers compensation settlement; preventing assignment of the proceeds of a special needs trust from and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter forty-six of said code, as contained in chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, be amended and reenacted, all to read as follows:

Chapter
46. Uniform Commercial Code.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.


§12-6A-6. Debt information reporting.
(a) Within fifteen days following the end of each calendar quarter, each state spending unit shall provide the division and the legislative auditor, in the manner provided by this article and in such form and detail as the state treasurer may by regulation require, a statement of the total debt of each such state spending unit incurred during the calendar quarter and owing at the end of such calendar quarter, which statement shall include, but not be limited to, the name of the state spending unit, the amounts and types of debt incurred during the calendar quarter and outstanding at the end of the calendar quarter, the cost and expenses of incurring the debt, the maturity date of each debt, the terms and conditions of the debt, the current debt service on the debt, the current interest rate on the debt, the source of the proceeds utilized for repayment of the debt, the amounts of repayment during the calendar quarter, the repayment schedule and the security for the debt. A state spending unit having no outstanding debt shall not be required to provide the quarterly report but shall file an annual report, on forms established by the division of debt management: Provided, That the state spending unit shall immediately notify the division of debt management of any change in the spending unit’s outstanding debt condition.

(b) Not less than thirty days prior to a proposed offering of debt to be issued by a state spending unit, written notice of such proposed offering and the terms thereof shall be given to the division by such state spending unit in the form as the division may by regulation require. Within thirty days after closing, the terms shall be reported to the division in the form as the division may by regulation require.

(c) On or before the thirty-first day of January and the thirty-first day of July of each year, the treasurer shall prepare and issue a report of all debt of the state and its spending units and of all proposed debt issuances of which the treasurer has received notice and shall furnish a copy of such report to the
governor, the president of the Senate, the speaker of the House of Delegates, the members of the joint committee on government and finance, the legislative auditor and upon request to any other legislative committee and any member of the Legislature. The report shall be kept available for inspection by any citizen of the state. The treasurer shall also prepare updated reports of all debt of the state and its spending units which shall be available for inspection at the office of the state treasurer on or before the thirty-first day of March and the thirtieth day of September of each year.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS.

SUBPART 2. APPLICABILITY OF ARTICLE.


§46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.


§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

§46-9-525. Fees.

§46-9-705. Effectiveness of action taken before effective date.


(a) General scope of article. Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;
(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) A consignment;

(5) A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) as provided in section 9-110; and

(6) A security interest arising under section 4-210 or 5-118.

(b) Security interest in secured obligation. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) Extent to which article does not apply. This article does not apply to the extent that:

(1) A statute, regulation or treaty of the United States preempts this article; or

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5-114.

(d) Inapplicability of article. This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
(A) Liens on real property in sections 9-203 and 9-308;
(B) Fixtures in section 9-334;
(C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and
(D) Security agreements covering personal and real property in section 9-604;
(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
(13) An assignment of a deposit account in a consumer transaction, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds; or
(14) A transfer by a government or a governmental unit.

PART 3. PERFECTION AND PRIORITY.

§46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.

(a) Rights under articles three, seven and eight not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles three, seven and eight.

(b) Protection under article eight. This article does not limit the rights of or impose liability on a person to the extent
that the person is protected against the assertion of a claim
under article eight.

(c) **Filing not notice.** Filing under this article does not
constitute notice of a claim or defense to the holders, or
purchasers, or persons described in subsections (a) and (b) of
this section.


(a) **Security interest in fixtures under this article.** A
security interest under this article may be created in goods that
are fixtures or may continue in goods that become fixtures. A
security interest does not exist under this article in ordinary
building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.**
This article does not prevent creation of an encumbrance upon
fixtures under real property law.

(c) **General rule: subordination of security interest in
fixtures.** In cases not governed by subsections (d) through (h),
inclusive, of this section, a security interest in fixtures is
subordinate to a conflicting interest of an encumbrancer or
owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as other-
wise provided in subsection (h) of this section, a perfected
security interest in fixtures has priority over a conflicting
interest of an encumbrancer or owner of the real property if the
debtor has an interest of record in or is in possession of the real
property and:

(1) The security interest is a purchase-money security
interest;
(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(c) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

1. The debtor has an interest of record in the real property or is in possession of the real property and the security interest:
   1. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
   2. Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

2. Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:
   1. Factory or office machines;
   2. Equipment that is not primarily used or leased for use in the operation of the real property; or
   3. Replacements of domestic appliances that are consumer goods;

3. The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or
The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in section 9-311(a)(2).

Priority based on consent, disclaimer or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

Continuation of subsection (f)(2) priority. The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as
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78 a construction mortgage to the extent that it is given to refi-
79 nance a construction mortgage.

80 (i) **Priority of security interest in crops.** A perfected
81 security interest in crops growing on real property has priority
82 over a conflicting interest of an encumbrancer or owner of the
83 real property if the debtor has an interest of record in or is in
84 possession of the real property.

85 (j) **Subsection (i) prevails.** Subsection (i) of this section
86 prevails over any inconsistent provision of an existing or future
87 statute, rule or regulation of this state unless the provision is
88 contained in a statute of this state, refers expressly to this
89 section and states that the provision prevails over this section.


1 (a) **“Commingled goods.”** In this section, “commingled
2 goods” means goods that are physically united with other goods
3 in such a manner that their identity is lost in a product or mass.

4 (b) **No security interest in commingled goods as such.** A
5 security interest does not exist in commingled goods as such.
6 However, a security interest may attach to a product or mass
7 that results when goods become commingled goods.

8 (c) **Attachment of security interest to product or mass.**
9 If collateral becomes commingled goods, a security interest
10 attaches to the product or mass.

11 (d) **Perfection of security interest.** If a security interest in
12 collateral is perfected before the collateral becomes commingled
13 goods, the security interest that attaches to the product or
14 mass under subsection (c) of this section is perfected.

15 (e) **Priority of security interest.** Except as otherwise
16 provided in subsection (f) of this section, the other provisions
of this part determine the priority of a security interest that
attaches to the product or mass under subsection (c) of this
section.

(f) **Conflicting security interests in product or mass.** If
more than one security interest attaches to the product or mass
under subsection (c) of this section, the following rules deter-
mine priority:

(1) A security interest that is perfected under subsection (d)
has priority over a security interest that is unperfected at the
time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under
subsection (d) of this section, the security interests rank equally
in proportion to the value of the collateral at the time it became
commingled goods.

**PART 4. RIGHTS OF THIRD PARTIES.**

§46-9-406. **Discharge of account debtor; notification of assign-
ment; identification and proof of assignment; restrictions on assignment of accounts, chattel
paper, payment intangibles and promissory notes ineffective.**

(a) **Discharge of account debtor; effect of notification.**
Subject to subsections (b) through (i), an account debtor on an
account, chattel paper or a payment intangible may discharge
its obligation by paying the assignor until, but not after, the
account debtor receives a notification, authenticated by the
assignor or the assignee, that the amount due or to become due
has been assigned and that payment is to be made to the
assignee. After receipt of the notification, the account debtor
may discharge its obligation by paying the assignee and may
not discharge the obligation by paying the assignor.
(b) When notification ineffective. Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) of this section and sections 2A-303 and 9-407, and subject to subsection (h) of this section, a term in an agreement between an account debtor
and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Inapplicability of subsection (d) to certain sales. Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. Except as otherwise provided in sections 2A-303 and 9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim,
defense, termination, right of termination or remedy under the account or chattel paper.

(g) **Subsection (b)(3) not waivable.** Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) **Inapplicability.** This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f): Chapter twenty-three, article four, section eighteen, Chapter forty-six-a, article six-h, and a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396p(d)(4).

(j) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an
account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:
(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor’s rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction
giving rise to the promissory note, health-care-insurance receivable or general intangible;

(5) Does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible.

(e) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

(f) **Inapplicability.** Subsection (e) of this section does not apply to an assignment or transfer of or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the statute is inconsistent with said subsection: Chapter twenty-three, article four, section eighteen; chapter forty-six-a, article six-h; and a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396(d)(4).

**PART 5. FILING.**

**SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.**

*§46-9-525. Fees.*

(a) **Initial financing statement or other record: general rule.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part,

*Clerk's Note: This section was also amended by S. B. 478 (Chapter 265), which passed prior to this act.*
other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the record is communicated in writing and consists of one or two pages;

(2) Ten dollars if the record is communicated in writing and consists of more than two pages; and

(3) Ten dollars if the record is communicated by another medium authorized by filing-office rule.

(b) **Initial financing statement: public-finance and manufactured housing transactions.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five dollars if the request is communicated in writing;
(2) Five dollars if the request is communicated by another medium authorized by filing-office rule; and

(3) Fifty cents per page for each active lien.

(e) Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) Deposit of funds. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state in a separate fund in the state treasury and shall be expended solely for the purposes of this article, unless otherwise provided by appropriation or other action of the Legislature.

PART 7. TRANSITION.

§46-9-705. Effectiveness of action taken before effective date.

(a) Preeffective-date action; two-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within two years after this article takes effect. An attached security interest becomes unperfected two years after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.
(b) Preeffective-date filing. The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) Preeffective-date filing in jurisdiction formerly governing perfection. This article does not render ineffective an effective financing statement that, before this article takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103. However, except as otherwise provided in subsections (d) and (e) of this section and section 9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) The thirtieth day of June, two thousand six.

(d) Continuation statement. The filing of a continuation statement after this article takes effect does not continue the effectiveness of the financing statement filed before this article takes effect. However, upon the timely filing of a continuation statement after this article takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this article takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility financing statement. Subsection (c)(2) of this section applies to a financing statement that, before this article takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103 only to the extent that part 3 provides that the law of a
jurisdiction other than the jurisdiction in which the financing
statement is filed governs perfection of a security interest in
collateral covered by the financing statement.

(f) Application of part 5. A financing statement that
includes a financing statement filed before this article takes
effect and a continuation statement filed after this article takes
effect is effective only to the extent that it satisfies the require-
ments of part 5 for an initial financing statement.

CHAPTER 307

(S. B. 466 — By Senator Snyder)
[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred three, article two,
chapter thirty-six-b of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the construction
and validity of declaration and bylaws of common interest
communities; and limitations on changes in restrictive covenants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COM-
MON INTEREST COMMUNITIES.

§36B-2-103. Construction and validity of declaration and bylaws.

1 (a) All provisions of the declaration and bylaws are
2 severable.
(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules or regulations adopted pursuant to section 3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

(e) A declaration or the bylaws may not change or alter a restrictive covenant in a deed to any real estate that is or that becomes subject to the provisions of this chapter. The restrictive covenants that are in effect at the time real estate is purchased that is or that becomes subject to the provisions of this chapter may not be changed or altered as to the purchaser of that real estate or as to any assign, heir or beneficiary of the original purchaser unless that original purchaser, assign, heir or beneficiary agrees in writing to a change of a restrictive covenant. This subdivision does not apply to the change of restrictive covenants of homeowner fees if the fees do not exceed the sum of one hundred dollars a year.

CHAPTER 308

(S. B. 520 — By Senators Wooton and Helmick)

[Passed April 13, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact sections four hundred one and four hundred seven, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to securities; including viaticals in the definition of a security; authorizing the appointment of special investigators; authorizing certain duties of the commissioner, deputy commissioners and investigators; requiring an oath of the commissioner, deputy commissioner and investigators; requiring the filing of the oaths; making the civil and criminal investigations of the securities commission exempt from requirements of article nine-a, chapter six of said code and chapter twenty-nine-b of said code; and providing that the commissioner, deputy commissioners and investigators of the securities commission not be allowed to carry guns or other firearms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

§32-4-407. Sworn investigator, investigations and subpoenas.

§32-4-401. Definitions.

1 When used in this chapter, unless the context otherwise
2 requires:

3 (a) “Commissioner” means the auditor of the state of West
4 Virginia.

5 (b) “Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or
6 attempting to effect purchases or sales of securities. “Agent”
8 does not include an individual who represents an issuer in: (1) Effecting transactions in a security exempted by subdivision (1), (2), (3), (10) or (11), subsection (a), section four hundred two of this article; (2) effecting transactions exempted by subsection (b), section four hundred two of this article; (3) effecting transactions in a covered security as described in section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of 1933; (4) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or (5) effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition.

(c) “Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. “Broker-dealer” does not include: (1) An agent; (2) an issuer; (3) a bank, savings institution or trust company; or (4) a person who has no place of business in this state if: (A) He or she effects transactions in this state exclusively with or through: (i) The issuers of the securities involved in the transactions; (ii) other broker-dealers; or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of twelve consecutive months he or she does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in subparagraph (A), paragraph (4) of this subdivision whether or not the offeror or any of the offerees is then present in this state.
(d) "Fraud", "deceit" and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(f) "Federal covered adviser" means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940; or (2) is excluded from the definition of "investment advisor" under section two hundred two-a (11) of the Investment Advisers Act of 1940.

(g) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include: (1) A bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his or her profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them; (4) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either case, the financial or business news published or disseminated is made
available to the general public and the content does not consist
of rendering advice on the basis of the specific investment
situation of each client; (5) a person whose advice, analyses or
reports relate only to securities exempted by subdivision (1),
subsection (a), section four hundred two of this article; (6) a
person who has no place of business in this state if: (A) His or
her only clients in this state are other investment advisers,
broker-dealers, banks, savings institutions, trust companies,
insurance companies, investment companies as defined in the
Investment Company Act of 1940, pension or profit-sharing
trusts or other financial institutions or institutional buyers,
whether acting for themselves or as trustees; or (B) during any
period of twelve consecutive months he or she does not have
more than five clients who are residents of this state other than
those specified in subparagraph (A), paragraph (6), of this
subdivision, whether or not he or she or any of the persons to
whom the communications are directed is then present in this
state; (7) an investment adviser representative; (8) a "federal
covered adviser"; or (9) such other persons not within the intent
of this paragraph as the commissioner may by rule or order
designate.

(h) "Investment adviser representative" means any partner,
officer, director of or a person occupying a similar status or
performing similar functions or other individual, except clerical
or ministerial personnel, who is employed by or associated with
an investment adviser that is registered or required to be
registered under this chapter or who has a place of business
located in this state and is employed by or associated with a
federal covered adviser; and including clerical or ministerial
personnel, who does any of the following: (1) Makes any
recommendations or otherwise renders advice regarding
securities; (2) manages accounts or portfolios of clients; (3)
determines which recommendation or advice regarding securi-
ties should be given; (4) solicits, offers or negotiates for the sale
of or sells investment advisory services unless such person is
registered as an agent pursuant to this article: or (5) supervises employees who perform any of the foregoing unless such person is registered as an agent pursuant to this article.

(i) “Issuer” means any person who issues or proposes to issue any security, except that: (1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any “issuer”.

(j) “Nonissuer” means not, directly or indirectly, for the benefit of the issuer.

(k) “Person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(l) (1) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(2) “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value;
(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value;

(4) A purported gift of assessable stock is considered to involve an offer and sale;

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(6) The terms defined in this subdivision do not include:
(A) Any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(m) “Securities Act of 1933”, “Securities Exchange Act of 1934”, “Public Utility Holding Company Act of 1935” and “Investment Company Act of 1940” mean the federal statutes of those names as amended before the effective date of this chapter. The National Securities Markets Improvement Act of
172 1996 ("NSMIA") means the federal statute which makes certain amendments to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

176 (n) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement contract; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period: Provided, That "security" does include insurance or endowment policies or annuity contracts that are viatical settlement contracts or agreements for the purchase, sale, assignment, transfer, devise or bequest of any portion of a death benefit or ownership of a life insurance policy or certificate that is less than the expected death benefit of the life insurance policy or certificate.

178 (o) "Federal covered security" means any security that is a covered security under section 18(b) of the Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996, or rules promulgated thereunder.

198 (p) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.
§32-4-407. Sworn investigator, investigations and subpoenas.

(a) Sworn Investigators. –

(1) The commissioner may appoint special investigators to aid in investigations conducted pursuant to chapter thirty-two-b of this code.

(2) The commissioner, deputy commissioners and each investigator, prior to entering upon the discharge of his or her duties, shall take an oath before any justice of the West Virginia supreme court of appeals, circuit judge or magistrate which is to be in the following form:

State of West Virginia

County of ........................., to wit: I, ............... , do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the securities commission of West Virginia to the best of my skill and judgment.

(Signed)............................

Taken, subscribed and sworn to before me, this ........ day of ..........2001.

(3) The oaths of the commissioner, deputy commissioner or commissioners and investigators of the West Virginia securities commission are to be filed and preserved in the office of the state auditor.

(b) Investigations and subpoenas. –
(1) The commissioner in his or her discretion: (A) May make such public or private investigations within or outside of this state as he or she deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; (B) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and (C) may publish information concerning any violation of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this chapter, the commissioner, deputy commissioner or commissioners, if any, and special investigators appointed pursuant to this section may administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, take and store evidence in compliance with the policies and procedures of the West Virginia state police and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner finds relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court of Kanawha County, upon application by the commissioner, may issue to the person an order requiring him or her to appear before the commissioner, or the officer designated by him or her, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him or her, or in any proceeding
institutioned by the commissioner on the ground that the testimony
or evidence (documentary or otherwise) required of him or her
may tend to incriminate him or her or subject him or her to a
penalty or forfeiture; but no individual may be prosecuted or
subjected to any penalty or forfeiture for or on account of any
transaction, matter or thing concerning which he or she is
compelled, after claiming his or her privilege against
self-incrimination to testify or produce evidence (documentary
or otherwise), except that the individual testifying is not exempt
from prosecution and punishment for perjury or contempt
committed in testifying.

(5) Civil and criminal investigations undertaken by the
West Virginia securities commission are not subject to the
requirements of article nine-a, chapter six of this code and
chapter twenty-nine-b of this code.

(6) Nothing in this chapter may be construed to authorize
the commissioner, a deputy commissioner, a special investiga-
tor appointed pursuant to this section or any other employee of
the state auditor to carry or use a hand gun or other firearm in
the discharge of his or her duties under this article.

(7) Nothing in this chapter limits the power of the state to
punish any person for any conduct which constitutes a crime.

CHAPTER 309

(Com. Sub. for H. B. 2804 — By Delegates Staton, Canterbury,
Keener, Craig, Stephens, Fox and Swartzmiller)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections eleven, sixteen, eighteen, eighteen-a and eighteen-b, article seven, chapter twenty of said code; and to further amend said article by adding thereto five new sections, designated sections eighteen-c, eighteen-d, nineteen-a, twenty-a and twenty-two-a, all relating to motorboats and other motorized vessels; providing for certain implied consent regulations to test for alcohol on blood, breath or urine; regulating certain personal watercrafts; restricting the age of operation; requiring certain flotation and safety devices; restricting the hours of use; prohibiting certain reckless activities; setting guidelines for towing certain water skiers and other towables; regulating certain boating and personal watercraft liveries; providing certain exemptions; providing for a duty on certain personal watercrafts and motorized vessels to render aid after a collision; restriction of operation of certain personal watercrafts or other motorized vessels under the influence of alcohol, controlled substances or drugs; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections eleven, sixteen, eighteen, eighteen-a and eighteen-b, article seven, chapter twenty, be amended and reenacted, and that said article be further amended by adding thereto five new sections, designated sections eighteen-c, eighteen-d, nineteen-a, twenty-a and twenty-two-a, all to read as follows:

Chapter

17C. Traffic Regulations and Laws of the Road.
20. Natural Resources.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.
ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who drives a motor vehicle in this state is deemed to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood.

(b) A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(c) A secondary test of blood, breath or urine is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in section two of this article.

(d) The law-enforcement agency that employs the law-enforcement officer shall designate which type of secondary test is to be administered: Provided, That if the test designated is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate either a breath or urine test to be administered. Notwithstanding the provisions of section seven of this article, the refusal to submit to a blood test only may not result
in the revocation of the arrested person's license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is then arrested shall be given a written statement advising him or her that his or her refusal to submit to the secondary chemical test pursuant to subsection (d) of this section, will result in the revocation of his or her license to operate a motor vehicle in this state for a period of at least one year and up to life.

(f) Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the division of health in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made: Provided, That the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device located outside the county in which the arrest was made, if (i) there is no properly functioning secondary chemical testing device located within the county the arrest was made or (ii) there is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.

(g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in
evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.

(h) Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

(i) For the purpose of this article, the term "law-enforcement officer" or "police officer" means: (1) Any member of the West Virginia state police; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; (4) any conservation officer of the division of natural resources; and (5) any special police officer appointed by the governor pursuant to the provisions of section forty-one, article three, chapter sixty-one of this code who has completed the course of instruction at a law-enforcement training academy as provided for under the provisions of section nine, article twenty-nine, chapter thirty of this code.

(j) A law-enforcement officer who has reasonable cause to believe that person has committed an offense prohibited by section eighteen, article seven, chapter twenty of this code, relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the provisions of this section in administering, or causing to be administered, a preliminary breath analysis and the secondary chemical test of the accused person's blood, breath or urine for the purpose of determining alcohol content of his or her blood.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-11. Motorboats and other terms defined.
§20-7-16. Boat liveries.
§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.
§20-7-18a. Negligent homicide; penalties.
§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.
§20-7-18c. Implied consent to test; administration at direction of law-enforcement officer.
§20-7-18d. Operation of personal watercrafts.
§20-7-19a. Towing water skiers and towables.
§20-7-20a. Personal watercraft operation and towing exemptions.
§20-7-22a. Agency rule making for personal watercrafts.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

2 (1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

3 (2) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto;

4 (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

5 (4) "Commissioner" means the commissioner of the division of motor vehicles;
“Director” means the director of the division of natural resources; and

(6) “Personal watercraft” means a small vessel of less than sixteen feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. For purposes of this article, the term “personal watercraft” also includes “specialty prop-crafts” which are vessels similar in appearance and operation to a personal watercraft but which are powered by an outboard motor or propeller driven motor.

§20-7-16. Boat liveries.

(a) The owner or operator of a boat livery or rental facility shall cause to be kept a record of the name and address of the person or persons hiring any vessel including personal watercrafts which is designed or permitted by him or her to be operated as a motorboat, identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

(b) Neither the owner or operator of a boat livery or rental facility, nor his or her agent or employee, shall permit any motorboat, personal watercraft or any vessel designed or permitted by him or her to be operated as a motorboat or personal watercraft to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section thirteen of this article and any rules made pursuant thereto.

(c) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide boating safety orientation for all persons that rent any vessel, including personal watercrafts, unless that person holds a certificate as
required by section twelve-b, article seven of this chapter. The
owner of a boat livery or rental facility, or his or her agent or
employee, shall also provide to the operator or operators in
print, prior to rental, the operational characteristics of personal
watercrafts.

(d) The owner or operator of a boat livery or rental facility,
or his or her agent or employee, may not lease, hire or rent a
personal watercraft to any person under eighteen years of age.

(e) The owner or operator of a boat livery or rental facility,
or his or her agent or employee, shall provide to the operator or
operators of rental vessels, boats or personal watercrafts, in
print, all pertinent boating rules including, but not limited to,
those rules that may be peculiar to the area of the rental, such
as no-wake zones, restricted areas, channel markers, water
hazard markers and swimming zones.

(f) The owner or operator of a boat livery or rental facility
shall carry liability insurance of at least three hundred thousand
dollars and possess the license and surety bond as required by
section twenty-three-d, article two of this chapter.

§20-7-18. Care in handling watercraft; duty to render aid after
a collision, accident or casualty; accident reports.

(a) No person shall operate a motorboat, jet ski or other
motorized vessel or manipulate any water skis, surfboard or
similar device in a reckless or negligent manner so as to
endanger the life, limb or property of any person.

(b) No person shall operate any motorboat, jet ski or other
motorized vessel, or manipulate any water skis, surfboard or
similar device while under the influence of alcohol or a
controlled substance or drug, under the combined influence of
alcohol and any controlled substance or any other drug, or while
having an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his or her name, address and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(d) The operator of a vessel involved in a collision, accident or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of five hundred dollars damage to a vessel or other property. The report shall be made on forms and contain information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

§20-7-18a. Negligent homicide; penalties.

(a) When the death of any person ensues within one year as a proximate result of injury received by operating any motorboat, jet ski or other motorized vessel anywhere in this state in reckless disregard of the safety of others, the person so operating the motorboat, jet ski or other motorized vessel is guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment in the county or regional jail for not
more than one year or by fine of not less than one hundred dollars nor more than one thousand dollars, or by both fine and imprisonment.

(c) The director shall suspend the privilege to operate a motorboat or other motorized vessel in this state for a period of five years from the date of conviction.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, 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, 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 the 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) Operates a motorboat, jet ski or other motorized vessel
in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled
substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol
and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her
blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or
fails to perform any duty imposed by law in the operating of the
motorboat, jet ski or other motorized vessel, which act or
failure proximately causes the death of any person within one
year next following the act or failure, is guilty of a misde-
meanor 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) Operates a motorboat, jet ski or other motorized vessel
in this state while:
(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or
(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, operates a motorboat, jet ski or other motorized vessel 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 shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;
(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in 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 motorboat, jet ski or other motorized vessel to be operated 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 operates a motorboat, jet ski or other motorized vessel 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, shall, for a first offense under this subsection, be 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 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) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) The person when so operating has on or within the motorboat, jet ski or other motorized vessel one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(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 a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any
subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in the 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 shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section for an offense which occurred on or after the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of this section for an offense which occurred within a period of five years immediately preceding the date of the offense; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the effective date of this section.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. The warrant or indictment or information shall set forth the date, location and particulars of the previous offense or offenses. No person
may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to operate as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and 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 incarceration required by this section.

§20-7-18c. Implied consent to test; administration at direction of law-enforcement officer.

Any person who operates a motorboat, jet ski or other motorized vessel in this state shall be deemed to have given his or her consent by the operation thereof, to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood. A preliminary breath test and the secondary chemical test of blood, breath or urine and the results of the tests may be designated, administered,
processed, interpreted and used in the same manner as tests designated and administered in accordance with the provisions of article five, chapter seventeen-c of this code.

§20-7-18d. Operation of personal watercrafts.

(a) No person under the age of fifteen may operate a personal watercraft on the waters of this state: Provided, That a person that has attained the age of twelve may operate a personal watercraft if a person eighteen years or older is aboard the personal watercraft.

(b) A person may not operate a personal watercraft unless each person on board or being towed behind is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard. Inflatable personal flotation devices do not meet the requirements of this section.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft at anytime between the hours of sunset and sunrise. However, an agent or employee of a fire rescue, emergency rescue unit, or law-enforcement division is exempt from this subsection while performing his or her official duties.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property constitute reckless operation of a vessel and include, but are not limited to:

(1) Weaving through congested traffic;
(2) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed or restricted;

(3) Becoming airborne or completely leaving the water while crossing the wake of another vessel within one hundred feet of the vessel creating the wake;

(4) Operating at a greater than slow or no-wake speed within one hundred feet of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim areas, swimmers, surfers, persons engaged in angling, or any manually powered vessel;

(5) Operating contrary to navigation rules including following too closely to another vessel, including another personal watercraft. For the purpose of this subdivision, "following too closely" is construed as a proceeding in the same direction and operating at a speed in excess of ten miles per hour within one hundred feet to the rear or fifty feet to the side of another vessel which is underway, unless said vessels are operating in a narrow channel, in which case the personal watercraft may operate at the speed and flow of the other vessel traffic within the channel.

§20-7-19a. Towing water skiers and towables.

(a) No person may operate a personal watercraft towing another person on water skis or other towables unless the personal watercraft has, on board, in addition to the operator, a rear-facing observer, who monitors the progress of the person or persons being towed. This rear-facing observer must be at least twelve years of age.

(b) No person may operate a personal watercraft towing another person on water skis or other towables unless the total number of persons operating, observing and being towed does
not exceed the specified number of passengers as identified by the manufacturer as the maximum safe load for the vessel.

§20-7-20a. Personal watercraft operation and towing exemptions.

(a) The provisions of sections eighteen-d and nineteen-a do not apply to a performer engaged in a professional exhibition or a person engaging in an officially sanctioned regatta, race, marine parade, tournament, exhibition, or water safety demonstration.

(b) The provisions of sections eighteen-d and nineteen-a do not apply to a person who holds a valid master's, mate's, or operator's license issued by the United States Coast Guard while performing his or her official duties.

§20-7-22a. Agency rule making for personal watercrafts.

The director of the division of natural resources shall propose rules, including the personal watercraft safety orientation requirements for livery owners and operators, for legislative approval in accordance with the provisions of subdivision thirty, section seven, article one of this chapter and section one, article one, chapter twenty-nine-a of this code which effectuate the contents of sections eleven, sixteen, eighteen-d, nineteen-a and twenty-a of this article.

CHAPTER 310

(Com. Sub. for S. B. 574 — By Senators Snyder, Rowe and Mitchell)

[Passed April 14, 2001; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twenty-two, article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing certain civil penalties of the water pollution control act; and authorizing rules for the development of administrative resolution as an alternative to civil action.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

(a) Any person who violates any provision of any permit issued under or subject to the provisions of this article is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article or article one or three, chapter twenty-two-b of this code is subject to a civil penalty not to exceed twenty-five thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

Upon application by the director, the circuit courts of the state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the board or director, effluent limitations,
the terms and conditions of any permit granted under the
provisions of this article, or any order of the director or board,
and the venue of any such actions shall be the county in which
the violations or noncompliance exists or is taking place or in
any county in which the waters thereof are polluted as the result
of such violation or noncompliance. The court or the judge
thereof in vacation may issue a temporary or preliminary
injunction in any case pending a decision on the merits of any
injunction application filed. Any other section of this code to
the contrary notwithstanding, the state is not required to furnish
bond as a prerequisite to obtaining injunctive relief under this
article. An application for an injunction under the provisions of
this section may be filed and injunctive relief granted notwith-
standing that all of the administrative remedies provided for in
this article have not been pursued or invoked against the person
or persons against whom such relief is sought and notwithstand-
ing that the person or persons against whom such relief is
sought have not been prosecuted or convicted under the
provisions of this article.

The judgment of the circuit court upon any application filed
or in any civil action instituted under the provisions of this
section is final unless reversed, vacated or modified on appeal
to the supreme court of appeals. Any such appeal shall be
sought in the manner provided by law for appeals from circuit
courts in other civil cases, except that the petition seeking
review in any injunctive proceeding must be filed with said
supreme court of appeals within ninety days from the date of
entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or the
board in all civil penalty and injunction proceedings in the
circuit court and in the supreme court of appeals of this state
shall be provided by the attorney general or his or her assistants
and by the prosecuting attorneys of the several counties as well,
all without additional compensation, or the chief, director or the
board, with the written approval of the attorney general, may
employ counsel to represent him or her or it in a particular
proceeding.

(b) In addition to the powers and authority granted to the
director by this chapter to enter into consent agreements,
settlements and otherwise enforce this chapter, the director shall
propose, for legislative promulgation, rules in accordance with
the provisions of article three, chapter twenty-nine-a of this
code to establish a mechanism for the administrative resolution
of violations set forth in this section through consent order or
agreement as an alternative to instituting a civil action.

CHAPTER 311

(Com. Sub. for S. B. 594 — By Senator Rowe)

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-three of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section eighteen,
relating to requiring a preliminary performance review of and a
termination date for the workers’ compensation appeal board.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-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 eighteen, to read as follows:

ARTICLE 5. REVIEW.


1 Pursuant to the provisions of article ten, chapter four of this
2 code, the workers' compensation appeal board shall continue to
3 exist until the first day of July, two thousand three, unless
4 sooner terminated, continued or reestablished by act of the
5 Legislature.

CHAPTER 312

(H. B. 3252 — By Delegates Warner, Cann, Michael and Stalnaker)

[Passed April 12, 2001; in effect July 1, 2001. Approved by the Governor.]

AN ACT to repeal section four, chapter thirty-one, acts of the
Legislature, regular session, one thousand nine hundred sixty, as
last amended and reenacted by chapter two hundred thirteen, acts
of the Legislature, regular session, one thousand nine hundred
sixty-seven; and to amend and reenact section three, chapter
thirty-one, acts of the Legislature, regular session, one thousand
nine hundred sixty, as last amended and reenacted by chapter two
hundred thirteen, acts of the Legislature, regular session, one
thousand nine hundred sixty-seven, all relating to reconstituting
the membership of the Benedum Airport Authority.

Be it enacted by the Legislature of West Virginia:
That section four, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be repealed; and that section three, chapter thirty-one, acts of the Legislature, regular session, one thousand nine hundred sixty, as last amended and reenacted by chapter two hundred thirteen, acts of the Legislature, regular session, one thousand nine hundred sixty-seven, be amended and reenacted, all to read as follows:

**BENEDUM AIRPORT AUTHORITY.**

§3. Members of authority.

1 (a) The management and control of the “Benedum Airport Authority,” its property, operations, business and affairs, shall be lodged in a board of ten persons who shall be known as the members of the authority and who shall be appointed for a term of three years each, five members by the county commission of Harrison County, and five members by the county commission of Marion County, except that, as to the first board appointed, the term of one member appointed by each county commission shall expire on the first day of March next ensuing, the term of another member appointed by each county commission shall expire on the first day of the following March, and the term of the third original member appointed by each county commission shall expire on the first day of the next following March. All members of the board except the members of the first board shall be appointed for full three-year terms. As a member’s term expires, the county commission which appointed such member shall appoint a member for a full term of three years. A member may be reappointed for such additional term or terms as the county commission appointing him may deem proper. If a member resigns, is removed or for any reason his membership terminates during his term of office, a successor member to fill out the remainder of his term shall be appointed
by the county commission which appointed him. Members in
office at the expiration of their respective terms shall continue
to serve until their successors have been appointed and have
qualified. The county commission of the county appointing a
member may at any time for good cause, and upon at least five
days’ notice in writing to such member, remove such member
of the board of the authority by an order duly entered of record
in the record book of such commission and may appoint a
successor member for any member so removed. If any member
objects to being so removed, he may, in writing, demand a
hearing, and the county commission proposing to remove him
shall promptly thereafter, in its own county, hold a public
hearing thereon. After such public hearing, the county commis-
sion holding the hearing shall determine whether the member
shall be removed or shall be permitted to continue in office.

(b) On the thirtieth day of June, two thousand one, the
terms of each member of the board as constituted under the
provisions of subsection (a) of this section shall terminate.
Thereafter, the board of the authority shall be constituted
pursuant to the provisions of subsection (c) of this section and
the provisions of subsection (a) of this section shall be of no
effect and superseded in their entirety by the provisions of this
subsection and subsection (c) of this section.

(c)(1) Beginning the first day of July, two thousand one,
and thereafter, and notwithstanding any provision of subsection
(a) of this section to the contrary, the management and control
of the “Benedum Airport Authority,” its property, operations,
business and affairs, shall be lodged in a board of eleven
persons who shall be known as the members of the authority.
The board shall consist of seven appointed members and four
ex officio members, all of whom shall be voting members.

(2) The appointed members of the authority shall be
appointed and serve for terms as follows:
(A) One member of the county commission of Marion County, appointed by the county commission of Marion County for a term of one year;

(B) One member who shall be a resident of Marion County appointed by the county commission of Marion County for a term of one year;

(C) One member of the county commission of Harrison County, appointed by the county commission of Harrison County for a term of one year;

(D) One member who shall be a resident of Harrison County appointed by the county commission of Harrison County for a term of one year;

(E) One member who shall be a member of and appointed by the West Virginia Council for Community and Economic Development for a term of one year; and

(F) Two members whose principal place of employment is in a principal business location situate in Marion or Harrison counties of a business within the airline industry appointed by the board of the Mid-Atlantic Aerospace Complex, each for a term of one year.

(3) The terms of the appointed members of the authority shall commence on the first day of July and expire on the thirtieth day of June of the following calendar year. All members of the authority shall be appointed for a full one-year term. As a member's term expires, the entity that appointed the member shall appoint a member for a full term of one year. A member may be reappointed for such additional term or terms as the appointing entity may deem proper. In the event of a vacancy, or if a member resigns, is removed or for any reason his membership terminates during his term of office, a successor member to fill out the remainder of his or her term shall be
appointed by the entity that appointed the member. Members in
office at the expiration of their respective terms shall continue
to serve until their successors have been appointed and have
qualified.

(4) Each appointed member serves at the will and pleasure
of the entity that appointed the member and may be removed at
any time, upon notice in writing, by the appointing entity.

(5) The ex officio members of the authority shall be as
follows:

(A) The secretary of the department of transportation or his
or her designee;

(B) The city manager of the municipality of Bridgeport;

(C) The president of Fairmont state college; and

(D) The executive director of the Mid-Atlantic Aerospace
Complex.

CHAPTER 313

(H. B. 2591 — By Delegates Tucker, Shelton, Givens,
Ennis, Swartzmiller, DeLong and C. White)

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

AN ACT to direct the commissioner of highways to allow the
increase of gross weight limitations on certain roads in Brooke
County.
Be it enacted by the Legislature of West Virginia:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN BROOKE COUNTY.

§1. Authority of the commissioner of the division of highways to increase weight limitations on certain highways within Brooke County of West Virginia.

If the commissioner of the division of highways determines that the design, construction and safety of the highways in Brooke County of West Virginia are such that tonnage limits may be increased without undue damage, the commissioner may increase them. The commissioner shall then set new weight limitations applicable to said highways or portions thereof.

The commissioner may not establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

If the commissioner determines that those portions of State Route 2 (WV 2) in Brooke County from its intersection with State Street in Follansbee north to the intersection with Brooke County Route 507 (CR 507) at mile point 16.29, State Route 2 southbound (WV 2SB), from Brooke CR 507 to WV 2 northbound, and additionally US 22, and all connecting ramps from the Ohio state line to a point 1.00 mile east are designed and constructed to allow the gross weight limitation to be increased without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds up to ninety thousand pounds on those sections described above: Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using these routes must first obtain a multitrip permit from the commissioner before proceeding and shall provide the commissioner
with a bond sufficient to cover any potential undue damage which may result from the use: Provided, however, That if it is the determination of the commissioner that the routes, as specifically described herein, are in need of repaving, those persons, organizations or corporations shall pay the cost of repaving in amounts as assessed, from time to time, by the commissioner: Provided further, That the commissioner also determines that the increased limitation is not barred by an act of the United States Congress and the commissioner has received approval from the United States department of transportation to increase the weight limitation.

CHAPTER 314

(H. B. 2583 — By Delegates Givens and Ennis)

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

AN ACT to amend and reenact section one, chapter two hundred eighty-seven, acts of the Legislature, regular session, two thousand, relating to directing the commissioner of highways to allow the increase of gross weight limitations on certain roads in Ohio and Brooke Counties.

Be it enacted by the Legislature of West Virginia:

That section one, chapter two hundred eighty-seven, acts of the Legislature, regular session, two thousand, be amended and reenacted to read as follows:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN OHIO AND BROOKE COUNTIES.
§1. Authority of the commissioner of the division of highways to increase weight limitations on certain highways within Ohio and Brooke Counties of West Virginia.

If the commissioner of the division of highways determines that the design, construction and safety of certain highways designated herein in Brooke and Ohio counties of West Virginia are such that tonnage limits may be increased without undue damage, the commissioner may increase them. The commissioner shall then set new weight limitations applicable to said highways or portions thereof.

The commissioner may not establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

If the commissioner determines that the portion of U. S. Route 40 from milepost 0.84 to 1.35 in Ohio County to U. S. Route 40 westbound from milepost 0.00 to 0.23 in Ohio County to the southbound lanes of State Route 2 from milepost 0.17 to 0.26 in Ohio County and on State Route 2 in Ohio County from milepost 3.27 to 11.61 and State Route 2 in Brooke County from milepost 0.00 to 3.33 are designed and constructed to allow the gross weight limitation to be increased from eighty thousand pounds to ninety thousand pounds without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds up to ninety thousand pounds on those sections of State Route 2 and U. S. Route 40 described above: Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using said routes shall first obtain a multi-trip permit from the commissioner before proceeding and shall provide the commissioner with a bond sufficient to cover any potential...
AN ACT to authorize the county commissions of Ohio, Brooke and Hancock counties to jointly undertake, by contract, economic development projects.

Be it enacted by the Legislature of West Virginia:

JOINT UNDERTAKINGS FOR ECONOMIC DEVELOPMENT PROJECTS BY OHIO, BROOKE AND HANCOCK COUNTIES.

§1. Authority of the county commissions of Ohio, Brooke and Hancock counties to jointly undertake by contract economic development projects and sunset provisions.
(a) Any two or more county commissions of Ohio, Brooke and Hancock counties are authorized to cooperate or contract to share expenses for and revenues derived from joint economic development projects within their geographic territories regardless of the county in which the economic development project is located.

(b) A contract shall be authorized by each party thereto with approval of its legislative body.

(c) A contract shall set forth the purposes, powers, rights, obligations and responsibilities, financial and otherwise, of the contracting parties. The contract shall also include a plan in which the project will be evaluated for its success and performance and a mechanism for reporting the progress of the project to the Legislature.

(d) Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

(e) In the event that a county desires to withdraw from participation, the county may not be entitled to the return of any money or property advanced to the project, unless specifically provided for in the contract.

(f) In the event that a joint economic development project is terminated, all funds, property and other assets shall be returned to the county commissions in the same proportion as contributions of funds, property and other assets were made by the county commissions.

(g) The authorization of the commissions of Ohio, Brooke and Hancock counties to contract to share expenses for and revenues derived from joint economic development projects, as
set forth in this section, shall be subject to termination and
sunset three years after the effective date of the authorization
and after conduct of a performance audit: Provided, That the
termination of counties' authorization to enter into these
contracts does not cancel or terminate any contract already
entered into by the county commissions prior to sunset. The
performance audit shall be filed with the president of the Senate
and the speaker of the House of Delegates. The performance
audit shall contain the following:

(1) A summary of the contracts entered and the develop-
ment projects established;

(2) A summary of the results of the contracts and the
development projects, including jobs created and revenues
derived;

(3) A summary of the cost of the development projects; and

(4) Recommendations as to the changes needed to further
promote counties to cooperate in obtaining economic develop-
ment projects to be located in the state.

CHAPTER 316

(H. B. 3179 — By Delegate Riggs)

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

AN ACT to change the name of the “Upshur County Four-H Camp”
to “Upshur County Youth Camp.”
Be it enacted by the Legislature of West Virginia:

§1. Changing the name of the Upshur County Four-H Camp.

That, in all respects wherein reference is made in chapter one hundred fifteen of the acts of the Legislature, regular session, one thousand nine hundred forty-three and in chapter one hundred fifty-nine of the acts of the Legislature, regular session, one thousand nine hundred forty-nine, the name "Upshur County Four-H Camp" shall henceforth be the "Upshur County Youth Camp."

CHAPTER 317

(H. B. 2819 — By Delegates Warner, DeLong and Swartzmiller)

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

AN ACT to amend and reenact section one, chapter three hundred thirty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, relating to directing the commissioner of highways to issue a permit to certain users of two highways in the city of Weirton and allowing the increasing of gross weight limitations on certain roads in the city of Weirton, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section one, chapter three hundred thirty-one, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, be amended and reenacted to read as follows:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN WEIRTON, WEST VIRGINIA.
§1. Authority of the commissioner of the division of highways to increase weight limitations upon highways within the city of Weirton, West Virginia.

If the commissioner of the division of highways determines that the design, construction and safety of the highways within the city of Weirton, West Virginia, are such that tonnage limits may be increased without undue damage, the commissioner may increase them. The commissioner shall then set new weight limitations applicable to said highways or portions thereof.

The commissioner may not establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

If the commissioner determines that the portion of State Route 2 located in the city of Weirton in the counties of Hancock and Brooke, named “Main Street” and that portion of U.S. Route 22 within the city of Weirton in the county of Brooke named “Freedom Way” are designed and constructed to allow the gross weight limitation to be increased up to one hundred twenty thousand pounds without undue damage, the commissioner may increase the weight limitations from eighty thousand pounds up to one hundred twenty thousand pounds on those sections of State Route 2 and U.S. Route 22 described above: Provided, That any person, organization or corporation exceeding eighty thousand pounds gross weight limitation while using said routes shall first obtain a permit from the commissioner before proceeding and shall provide the commissioner with a bond sufficient to cover any potential undue damage which may result from the use: Provided, however, That if it is the determination of the commissioner that said routes, as specifically described herein, are in need of repaving, those persons, organizations or corporations shall pay the cost
of repaving in amounts as assessed, from time to time, by the commissioner: Provided further, That the commissioner also determines that the increased limitation is not barred by an act of the United States Congress and the commissioner has received approval from the United States department of transportation to increase the weight limitation.

The director of the enforcement division of the division of highways shall identify the trucks exceeding eighty thousand pounds gross weight using the said routes and the companies they represent and report this information to the commissioner of the division of highways.

The commissioner of the division of highways shall annually review the damages to the said routes and report the damages to: (1) The local legislative delegation, consisting of two delegates from Brooke County and two delegates from Hancock County and the two senators representing the first senatorial district; and (2) the companies identified by the director of the enforcement division.

The commissioner shall assess the damages to the companies, identified by the director of the enforcement division, using the said routes. Notification, by the commissioner, of the amount of the assessment to the companies shall be by certified mail. A copy of the notice of the assessment of damages shall also be forwarded to the local legislative delegation.

The companies must pay the assessed damages to the division of highways within thirty days of receipt of the notice. If such payments are not made within thirty days, a penalty in the amount of ten per cent per annum of the outstanding assessment shall be imposed quarterly. The division of highways shall, to the best of its ability, commence the repair of the damaged routes within six months of the assessment.
AN ACT to transfer land located in Lubeck District, Wood County, West Virginia, from the state of West Virginia to Wood County commission for the use and benefit of the county commission for the purpose of developing a park.

Be it enacted by the Legislature of West Virginia:

LAND TRANSFER TO WOOD COUNTY COMMISSION.

1 The state of West Virginia is authorized to transfer to the county commission of Wood County, West Virginia, without consideration, all of those two certain lots, tracts or parcels of land, together with the improvements thereon, the privileges thereof and the appurtenances thereunto belonging, situate the district of Lubeck, in Wood County, West Virginia, and being more particularly bounded and described as follows:

8 Beginning at a concrete monument in the southerly right-of-way line of State Route 95 where the same intersects the easterly right-of-way line of the access road to the within described real estate; thence with the southerly right-of-way line of said Route 95 the following four calls and distances: N. 74 degrees 47' E. 164 feet to an iron pin; S. 84 degrees 10' E. 229 feet to an iron pin; N. 88 degrees 36' E. 161.80 feet to an iron pin; thence N. 45 degrees 26' E. 228 feet, to the intersection of the westerly right-of-way line of Bradley Avenue; thence with the westerly right-of-way line of Bradley Avenue
the following two calls and distances: S. 55 degrees 26' E. 306.40 feet to an iron pin; S. 56 degrees 32' E. 252.89 feet to a concrete monument in the westerly right-of-way line of said Bradley Avenue; thence leaving Bradley Avenue, S. 00' W. 577.70 feet to an iron pin; thence N. 84 degrees 46' W. 476.90 feet, passing an iron pin at 446.90 feet, to the centerline of said access road; thence with the centerline of said access road three calls and distances: N. 18 degrees 46' W. 45 feet; N. 42 degrees 38' W. 100 feet; N. 46 degrees 58' W. 220.20 feet; thence N. 43 degrees 02' E. 85 feet to a concrete monument in the easterly right-of-way line of said access road; thence with the easterly right-of-way line of said access road N. 40 degrees 44' W. 184.11 feet to a concrete monument; and, N. 21 degrees 40' W. 216.46 feet to the place of beginning, containing 14.45 acres. as shown and described in a survey made by James F. Debrular, dated April 20, 1980, a plat of which survey is duly of record in the office of the Clerk of the County Commission of Wood County, West Virginia in Deed Book 738 at page No. 191 therein, to which plat reference is here made for a more particular description of the property to be conveyed herein. There is also included in the property authorized to be conveyed herein, that certain real estate, being a section of land sixty feet in width, running from the 14.45 acre tract above described through and bounded by other lands of the previous grantor of the property authorized to be conveyed herein and returning to the aforementioned 14.45 acre tract, which section of land appears on the above mentioned survey and is identified thereon as “60’ right-of-way” to which survey reference is hereby made for a more particular description of said land. Any conveyance of this said section of land shall be made subject to a perpetual and nonexclusive right-of-way and easement over, through and across said section of land for the purposes of ingress, egress and regress to and from other lands of the previous grantor of the property authorized to be conveyed herein, namely: Nemesis Temple, Ancient Arabic Order of the
Nobles of the Mystic Shrine, Parkersburg, West Virginia, its grantees, assigns or successors in title and subject to the right to cross over or under said strip of land for the purpose of connecting or extending utilities previously reserved by the aforesaid previous grantor of the property authorized to be conveyed herein.

Being the same real property conveyed by deed dated May 20, 1980, from S. William Goff, James H. Carr and James W. Deem. Trustees for Nemesis Temple, Ancient Arabic Order of the Nobles of the Mystic Shrine, Parkersburg, West Virginia, to the state of West Virginia, for the use and benefit of the Blennerhassett Historical Park Commission, which deed is of record in the Office of the Clerk of the County Commission of Wood County, West Virginia, in Deed Book 738, at page 189. Reference to said deed and map is here made for all pertinent purposes.

The state of West Virginia expressly reserves from this conveyance all artifacts located, found or discovered upon said real estate to be conveyed herein and the County Commission of Wood County, West Virginia agrees, by the acceptance of this conveyance, to deliver any artifacts found or discovered on the property to the Blennerhassett Island Historical State Park Museum.

This conveyance is subject to any and all reservations, restrictions, and rights-of-way or easements of record.

This conveyance is and shall be made upon the express condition that the property shall be used by the County Commission of Wood County, West Virginia to develop and maintain a public park area. If the property is used for any other purpose or is abandoned by the Commission, then the ownership of the property shall revert to the state of West Virginia.
LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2000

CHAPTER 1

(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 13, 2000; 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 - civil contingent fund, fund 0105, 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 a statement of the state fund, general revenue, dated September 13, 2000, setting
forth therein the cash balance as of July 1, 2000, and further included
the estimate of revenues for the fiscal year 2001, less net appropriate-
ion balances forwarded and regular appropriations for the fiscal year
2001; and

WHEREAS, It appears from the governor’s statement 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 0105, fiscal year 2001,
organization 0100, be supplemented and amended by increasing the
total appropriation by four million dollars in the line item as follows:

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<td>11</td>
<td>Civil Contingent Fund-</td>
</tr>
<tr>
<td>12</td>
<td>Total-Surplus (R) .............. 238 $ 4,000,000</td>
</tr>
</tbody>
</table>
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for Civil Contingent Fund—Total by four million dollars for expenditure during the fiscal year two thousand one.

CHAPTER 2

(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed September 13, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation in the state fund, general revenue, to the Board of Trustees of the University System of West Virginia - University of West Virginia Health Sciences Account, fund 0323, fiscal year 2001, organization 0478, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

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 0323, fiscal year 2001, organization 0478, be supplemented and amended to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

48—Board of Trustees of the
<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 WVU—School of Health Sciences—Charleston Division</td>
<td>$4,041,728</td>
</tr>
<tr>
<td>3 Primary Health Education</td>
<td>4,754,611</td>
</tr>
<tr>
<td>5 Graduate Medical Education</td>
<td>1,397,000</td>
</tr>
<tr>
<td>6 Medical Education</td>
<td>0</td>
</tr>
<tr>
<td>7 School of Osteopathic Medicine</td>
<td>6,710,904</td>
</tr>
<tr>
<td>8 Marshall Medical School</td>
<td>11,716,104</td>
</tr>
<tr>
<td>9 Marshall University - Center for Rural Health</td>
<td>200,000</td>
</tr>
<tr>
<td>11 WVU—School of Health Sciences</td>
<td>42,198,873</td>
</tr>
<tr>
<td>12 Vice Chancellor for Health Sciences</td>
<td>287,183</td>
</tr>
<tr>
<td>14 WVU Charleston Division—Poison Control Hot Line (R)</td>
<td>501,565</td>
</tr>
<tr>
<td>16 Rural Health Initiative Site Support Program (R)</td>
<td>2,980,000</td>
</tr>
<tr>
<td>18 School of Osteopathic Medicine—Capital Improvement</td>
<td>600,000</td>
</tr>
<tr>
<td>20 Total</td>
<td>$75,387,968</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Correctional Telemedicine Project (fund 0323, activity 406), Capital Outlay and Equipment (fund 0323, activity 542), WVU Charleston Division—Poison Control Hot Line (fund 0323, activity 510) and Rural Health Initiative Site Support Program (fund 0323, activity 853) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2001, with the exception of fund 0323, fiscal year 2000, activity 177 ($67,008); fund 0323, fiscal year 2000, activity 853 ($262,727) and fund 0323, fiscal year 2000, activity 510 ($14,630) which shall expire on June 30, 2000.

The amount in the Graduate Medical Education line-item above may be transferred to the Department of Health and Human Resources’ Medical Service Fund (fund 5084) for the purpose of matching federal or other funds to be used in support of graduate medical education, subject to the approval of the Vice-Chancellor for Health Sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, the funds may be utilized by the respective institutions for expenditure.

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 amending language with no additional funds being appropriated.

CHAPTER 3

(H. B. 206 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]  

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth
day of June, two thousand one, in the amount of two hundred ten 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 two hundred ten thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand one, to the secretary of state, fund 0155, fiscal year 2001, organization 1600, be supplemented and amended by increasing the total appropriation by two hundred ten thousand dollars in the line item as follows:

1 TITLE II - APPROPRIATIONS

2 Section 1. Appropriations from general revenue.

3 17-Secretary of State

4 (WV Code Chapters 3, 5, and 59)

5 Fund 0155 FY 2001 Org 1600
<table>
<thead>
<tr>
<th></th>
<th>General Activity Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Unclassified - Surplus ...........</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of two hundred ten 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 two hundred ten thousand dollars to the existing appropriation for Unclassified.

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**CHAPTER 4**

(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand one, to the bureau of environment - division of environmental protection - mines and minerals operations fund, fund 3324, fiscal year 2001, organization 0313, 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 environment - division of environmental protection - mines and minerals operations fund, fund 3324, fiscal year 2001, organization 0313, 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 3324, fiscal year 2001, organization 0313, be supplemented and amended by increasing the total appropriation by three million seven hundred ninety-four thousand two hundred fifty dollars in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 BUREAU OF ENVIRONMENT

4 199—Division of Environmental Protection—

5 Mines and Minerals Operations Fund

6 (WV Code Chapter 22)

7 Fund 3324 FY 2001 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services ..................</td>
<td>$ 1,780,000</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits ..................</td>
<td>551,800</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified ........................</td>
<td>1,462,450</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 increasing the existing appropriation for personal services by one million seven hundred eighty thousand dollars, the existing appropriation for employee benefits by five hundred fifty-one thousand eight hundred dollars, and the existing appropriation for unclassified by one million four hundred sixty-two thousand four hundred fifty dollars for expenditure during fiscal year two thousand one.
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 environment - division of environmental protection, fund 8708, fiscal year 2001, organization 0313, 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 8708, fiscal year 2001, organization 0313, be supplemented and amended by increasing the total appropriation by nine million eight hundred twenty-one thousand four hundred forty-one dollars in the line item as follows:

1 TITLE II - APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.
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 nine million eight hundred twenty-one thousand four hundred forty-one dollars for expenditure during fiscal year two thousand one.

CHAPTER 6

(H. B. 207 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight, article one, chapter thirty of said code, relating generally to the designation of certain legislative rules as procedural rules; authorizing the regional jail authority and division of corrections
to promulgate procedural rules for inmate grievances; and authorizing licensing boards to promulgate procedural rules for complaint procedures and contested case hearings by licensing boards.

_Be it enacted by the Legislature of West Virginia:_

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

**Chapter**

25. Division of Corrections.

30. Professions and Occupations.

**CHAPTER 25. DIVISION OF CORRECTIONS.**

**ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.**


(a) An inmate may not bring a civil action until the administrative remedies promulgated by the facility have been exhausted: _Provided, That the remedies promulgated by the facility will be deemed completed within sixty days from the date the inmate filed his or her initial complaint if the inmate fully complied with the requirements for filing and appealing the administrative complaint._

(b) The commissioner of the division of corrections and the executive director of the regional jail authority are authorized to establish administrative procedures for processing inmate complaints concerning food quality, health care, nonviolent or nonsexual conduct of employees or contractors of the division of corrections or regional jail authority, loss of privileges and other general complaints about daily living conditions which do
not directly and seriously concern an inmate’s physical health or security. The proposed joint legislative rule required by the prior enactment of this subsection shall be withdrawn. The commissioner and the executive director shall, by the thirty-first day of January, two thousand one, each file a procedural rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to meet the requirements of this subsection. The public comment period conducted for the proposed legislative rule shall serve as the public comment period required by section five, article three, chapter twenty-nine-a of this code.

(c) Notwithstanding any other provision of this code, no inmate shall be prevented from filing an appeal of his or her conviction or bringing a civil or criminal action alleging past, current or imminent physical or sexual abuse; if such a civil or criminal action is ultimately dismissed by a judge as frivolous, then the inmate shall pay the filing costs associated with the civil or criminal action as provided for in this article.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

1 (a) Every board referred to in this chapter may suspend or revoke the license of any person who has been convicted of a felony or who has been found to have engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Where any person has been convicted of a felony or has been found to have engaged in such conduct, practices or
acts, every board referred to in this chapter may enter into consent decrees, to reprimand, to enter into probation orders, to levy fines not to exceed one thousand dollars per day per violation, or any of these, singly or in combination. Each board may also assess administrative costs. Any costs which are assessed shall be placed in the special account of the board, and any fine which is levied shall be deposited in the state treasury’s general revenue fund. For purposes of this section, the word “felony” means a felony or crime punishable as a felony under the laws of this state, any other state, or the United States. Every board referred to in this chapter may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.

(b) Notwithstanding any other provision of law to the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court which issued the certificate, license, registration or authority. However, this requirement does not apply in cases where a board is authorized to suspend or revoke a certificate, license, registration or authority prior to a hearing if the person’s continuation in practice constitutes an immediate danger to the public.

(c) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder of the certificate, license, registration or authority and a notice of the time and place of hearing shall be served upon the person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he or she may
appear with witnesses and be heard in person, by counsel, or both. The board may take oral or written proof, for or against the accused, as it may consider advisable. If upon hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and suspension or revocation shall take from the person all rights and privileges acquired thereby.

(d) Pursuant to the provisions of section one, article five, chapter twenty-nine-a of this code, informal disposition may also be made by the board of any contested case by stipulation, agreed settlement, consent order or default. Further, the board may suspend its decision and place a licensee found by the board to be in violation of the applicable practice on probation.

(e) Any person denied a license, certificate, registration or authority who believes the denial was in violation of this article or the article under which the license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying the license, certificate, registration or authority. Hearings under this subsection is in accordance with the provisions for hearings which are set forth in this section.

(f) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript of the hearing retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(g) All proceedings under the provisions of this section are subject to review by the supreme court of appeals.

(h) On or before the first day of July, two thousand one, every board referred to in this chapter shall adopt procedural rules in accordance with the provisions of article three, chapter
twenty-nine-a of this code, which shall specify a procedure for
the investigation and resolution of all complaints against
persons licensed under this chapter. The proposed legislative
rules relating only to complaint procedures or contested case
hearing procedures required by the prior enactment of this
subsection shall be redesignated as procedural rules in accor-
dance with the provisions of article three, chapter twenty-nine-a
of this code. Each board shall file the procedural rules required
by this subsection by the thirty-first day of January, two
thousand one. The public hearing or public comment period
conducted for the proposed legislative rules shall serve as the
public hearing or public comment period required by section
five, article three, chapter twenty-nine-a of this code.

CHAPTER 7

(H. B. 201 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed November 14, 2000; in effect from passage. Approved by the Governor.]

AN ACT to amend section two, article thirteen, chapter eleven of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend said article by adding thereto a
new section, designated section two-f, all relating generally to the
business and occupation tax; deleting certain expired provisions
and obsolete language; imposing a business and occupation tax on
the privilege of manufacturing or producing synthetic fuel
products from coal; providing for rate and measure of tax;
defining terms; providing for credits to not reduce tax; authoriz-
ing promulgation of emergency rule; dedicating net proceeds of
tax collected; setting forth expiration date for tax and specifying effective date of tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.
§11-13-2f. Manufacturing or producing synthetic fuel from coal.

§11-13-2. Imposition of privilege tax.

(a) Imposition of tax. – There is hereby levied and shall be collected annual privilege taxes against the persons, on account of their business and other activities, and in the amount to be determined by the application of rates against the measures of tax as set forth in sections two-d, two-e, two-f, two-m, two-n and two-o of this article.

(b) If any person liable for any tax under section two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in the applicable section, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining the value.

(c) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and
seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which the applicable privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

§11-13-2f. Manufacturing or producing synthetic fuel from coal.

(a) *Rate and measure of tax.*—Upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit, or commercial use, either directly or through the activity of others in whole or in part, the amount of the tax shall be equal to fifty cents per ton of synthetic fuel manufactured or produced for sale, profit or commercial use. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the tax commissioner as provided in article three, chapter twenty-nine-a of this code.
AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

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

TITLE I—GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

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

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

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

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

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

The “fiscal year two thousand two” shall mean the period from the first day of July, two thousand one, through the thirtieth day of June, two thousand two.

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

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

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

Sec. 3. Classification of appropriations.—An appropria-
tion 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 other appropriate line item. Each
spending unit is hereby authorized and required to make such
payments in accordance with the provisions of article two,
chapter five-a of the code.
"BRIM Premiums" shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for "BRIM Premiums" be insufficient to cover such cost, the remainder of such costs shall be transferred by each spending unit from its "personal services" line item, its "employee benefit" line item, its "unclassified" line item or any other appropriate line item to "BRIM Premiums" for payment to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments.

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

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

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

"Equipment" shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.
“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

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

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

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

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

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

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

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

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.
TITLEx II—APPROPRIATIONS.
§1. Appropriations from general revenue.

ADMINISTRATION, DEPARTMENT OF

Administration, Department of—Office of the
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Services from the Handicapped—Fund
No. 0233 ................................................... 2888
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Coal Mine Safety and Technical Review
Committee—Fund No.0285 .................................. 2924
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Labor, Division of—Fund No. 0260 .......................... 2922
2867a APPROPRIATIONS

Miners' Health, Safety and Training, Division of—Fund No. 0277 ................................. 2923
Natural Resources, Division of—Fund No. 0265 ....................................................... 2923

EDUCATION, DEPARTMENT OF
State Board of Education—Division of Educational Performance Audits—Fund No. 0573 .................. 2894
State Board of Education—Vocational Division—Fund No. 0390 ....................................... 2894
State Department of Education—Aid for Exceptional Children—Fund No. 0314 ...................... 2892
State Department of Education—Fund No. 0313 ......................................................... 2891
State Department of Education—School Lunch Program—Fund No. 0303 ......................... 2890
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<tr>
<td>Health, Division of—Preventive Health—Fund No. 8753</td>
<td></td>
<td>3013</td>
</tr>
<tr>
<td>Health, Division of—Substance Abuse Prevention and Treatment</td>
<td>8793</td>
<td>3013</td>
</tr>
<tr>
<td>Human Services, Division of—Child Care and Development</td>
<td>8817</td>
<td>3014</td>
</tr>
<tr>
<td>Human Services, Division of—Energy Assistance</td>
<td>8755</td>
<td>3013</td>
</tr>
<tr>
<td>Human Services, Division of—Social Services—Fund No. 8757</td>
<td></td>
<td>3014</td>
</tr>
<tr>
<td>Human Services, Division of—Temporary Assistance Needy Families</td>
<td>8816</td>
<td>3014</td>
</tr>
</tbody>
</table>

§8. Awards for claims against the state.

§9. Appropriations from surplus accrued.

§10. Special revenue appropriations.

§11. State improvement fund appropriations.

§12. Specific funds and collection accounts.


§15. Appropriations for local governments.

§16. Total appropriations.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2002 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)</td>
<td>003</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and</td>
<td>005</td>
</tr>
<tr>
<td>Employees (R)</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>Contingent Fund (R)</td>
<td>021</td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>064</td>
</tr>
<tr>
<td>Computer Supplies (R)</td>
<td>101</td>
</tr>
<tr>
<td>Computer Systems (R)</td>
<td>399</td>
</tr>
<tr>
<td>Printing Blue Book (R)</td>
<td></td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td></td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2001 are to remain in full force and effect and are hereby reappropriated to June 30, 2002. Any balances so reappropriated may be transferred and credited to the fiscal year 2002 accounts.
Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

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

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

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

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

2—House of Delegates

Fund 0170 FY 2002 Org 2200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)</td>
<td>003</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers</td>
<td>005</td>
<td>521,162</td>
</tr>
<tr>
<td>and Employees (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Expenses and</td>
<td>021</td>
<td>$3,700,000</td>
</tr>
<tr>
<td>Contingent Fund (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td>399</td>
<td>1,120,000</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>17,571</td>
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<tr>
<td>Total</td>
<td></td>
<td>$7,558,733</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal
year 2001 are to remain in full force and effect and are hereby
reappropriated to June 30, 2002. Any balances so
reappropriated may be transferred and credited to the fiscal year
2002 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2002 Org 2300
The appropriations for the joint expenses for the fiscal year 2001 are to remain in full force and effect and are hereby reappropriated to June 30, 2002, except Court of Claims (activity 319). Any balances so reappropriated may be transferred and credited to the fiscal year 2002 accounts.

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

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

**JUDICIAL**

4—Supreme Court—
### General Judicial

**Fund 0180 FY 2002 Org 2400**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$38,399,018</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>500,000</td>
</tr>
<tr>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>2,937,501</td>
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<tr>
<td>Public Employees’ Insurance Matching (R)</td>
<td>012</td>
<td>4,454,384</td>
</tr>
<tr>
<td>Public Employees’ Retirement Matching (R)</td>
<td>016</td>
<td>3,052,156</td>
</tr>
<tr>
<td>Other Expenses (R)</td>
<td>029</td>
<td>7,513,268</td>
</tr>
<tr>
<td>Judges’ Retirement System (R)</td>
<td>110</td>
<td>6,000,000</td>
</tr>
<tr>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>3,100,000</td>
</tr>
<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>623,000</td>
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<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>990,000</td>
</tr>
<tr>
<td>Guardian Ad Litem (R)</td>
<td>265</td>
<td>250,000</td>
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<tr>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>175,000</td>
</tr>
<tr>
<td>Family Court Fund (R)</td>
<td>912</td>
<td>4,859,900</td>
</tr>
<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>208,998</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$73,063,225</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 2000 and 2001 are to remain in full force and effect and are hereby reappropriated to June 30, 2002. Any balances so reappropriated may be transferred and credited to the fiscal year 2002 accounts.

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

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

**EXECUTIVE**

*5—Governor's Office*

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Fund 0101 FY 2002 Org 0100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Salary of Governor .......... 002</td>
</tr>
<tr>
<td>3 Annual Increment ............ 004</td>
</tr>
<tr>
<td>4 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>5 Unclassified (R) ............ 099</td>
</tr>
<tr>
<td>6 National Governors' Association ... 123</td>
</tr>
<tr>
<td>7 Southern States Energy Board ... 124</td>
</tr>
<tr>
<td>8 WV Human Resource .......... 294</td>
</tr>
<tr>
<td>9 Investment Council .......... 299</td>
</tr>
<tr>
<td>10 Southern Growth Policies Board .. 308</td>
</tr>
<tr>
<td>11 Southern Technology Council .... 314</td>
</tr>
<tr>
<td>12 Southern Governors' Association ... 315</td>
</tr>
<tr>
<td>13 National Governors' Association for State... 315</td>
</tr>
<tr>
<td>14 Budget Officers .......... 315</td>
</tr>
<tr>
<td>15 BRIM Premium ........... 913</td>
</tr>
<tr>
<td>16 Office of Fiscal and Risk Management .. 361</td>
</tr>
<tr>
<td>17 Total ........................</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Publication of Papers and Transition Expenses (fund 0101, activity 465) and Unclassified (fund 0101, activity 099) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.
6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2002 Org 0100

1  Unclassified—Total .................. 096  $ 539,218

2  To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

7—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2002 Org 0100

1  Unclassified (R) .................. 099  $ 310,956
2  Family Resource Networks (R) ...... 274  1,505,000
3  Starting Points Centers and Parent Education Services (R) .................. 316  1,244,500
4  Educare (R) .................. 895  650,000
5  Family Violence Coordinating Council . 362  29,000
6  Total  .................. $ 3,739,456

8  Any unexpended balances remaining in the appropriations for Unclassified (fund 0104, activity 099), Starting Points Centers and Parent Education Services (fund 0104, activity 316), Family Resource Networks (fund 0104, activity 274) and Educare (fund 0104, activity 895) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.
8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2002 Org 0100

1 Civil Contingent Fund—Total (R) . . . . . . . . . 114 $ 4,000,000

2 Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Surplus (fund 0105, activity 263), Unclassified—Surplus—Total (fund 0105, activity 098) and Civil Contingent Fund—Total—Surplus (fund 0105, activity 238) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

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

13 The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the governor’s office.

9—Auditor’s Office—

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2002 Org 1200

1 Personal Services . . . . . . . . . . . . . . . 001 $ 2,092,944
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>50,523</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>740,257</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>711,624</td>
</tr>
<tr>
<td>6</td>
<td>Office Automation (R)</td>
<td>117</td>
<td>790,000</td>
</tr>
<tr>
<td>7</td>
<td>Social Security Repayment</td>
<td>256</td>
<td>312,759</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>1,876</td>
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<tr>
<td>9</td>
<td>Purchasing Card Program</td>
<td>711</td>
<td>41,000</td>
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<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$4,810,983</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099), Office Automation (fund 0116, activity 117) and Payroll System Acquisition (fund 0116, activity 594) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0116, fiscal year 2001, activity 099 ($116,704) which shall expire on June 30, 2001.

#### 10—Auditor’s Office—

**Family Law Masters—**

**Administration Fund**

(WV Code Chapter 48A)

Fund 0117 FY 2002 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>630,500</td>
</tr>
</tbody>
</table>

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

#### 11—Treasurer’s Office

(WV Code Chapter 12)
\begin{itemize}
  \item Personal Services \hspace{1cm} 001 \hspace{1cm} $1,971,072$
  \item Salary of Treasurer \hspace{1cm} 002 \hspace{1cm} 70,000
  \item Annual Increment \hspace{1cm} 004 \hspace{1cm} 34,856
  \item Employee Benefits \hspace{1cm} 010 \hspace{1cm} 577,186
  \item Unclassified (R) \hspace{1cm} 099 \hspace{1cm} 1,539,562
  \item Abandoned Property Program \hspace{1cm} 118 \hspace{1cm} 290,389
  \item Tuition Trust Fund (R) \hspace{1cm} 692 \hspace{1cm} 156,974
  \item School Building Sinking Fund Debt Service (R) \hspace{1cm} 770 \hspace{1cm} 4,458,000
  \item BRIM Premium \hspace{1cm} 913 \hspace{1cm} 12,335
  \item Total \hspace{1cm} \$9,110,374
\end{itemize}

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), School Building Sinking Fund Debt Service (fund 0126, activity 770) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0126, fiscal year 2001, activity 770 ($281,297) which shall expire on June 30, 2001.

\textit{12—Department of Agriculture}

(WV Code Chapter 19)

\begin{itemize}
  \item Personal Services \hspace{1cm} 001 \hspace{1cm} $3,561,810$
  \item Salary of Commissioner \hspace{1cm} 002 \hspace{1cm} 70,000
  \item Annual Increment \hspace{1cm} 004 \hspace{1cm} 73,000
  \item Employee Benefits \hspace{1cm} 010 \hspace{1cm} 1,239,093
  \item State Farm Museum \hspace{1cm} 055 \hspace{1cm} 110,000
  \item Unclassified (R) \hspace{1cm} 099 \hspace{1cm} 1,095,861
  \item Gypsy Moth Program (R) \hspace{1cm} 119 \hspace{1cm} 920,462
  \item Huntington Farmers Market \hspace{1cm} 128 \hspace{1cm} 50,000
\end{itemize}
Black Fly Control (R) .................. 137 428,456
Mingo County Surface Mine Project (R) 296 150,000
Tri-County Fair Association ............. 343 25,000
Predator Control ........................ 470 90,000
Charleston Farmers Market (R) .......... 476 129,321
Bee Research ............................. 691 70,000
Microbiology Program (R) ............... 785 151,107
Moorefield Agriculture Center (R) ... 786 730,691
BRIM Premium ............................. 913 77,862
Donated Foods Program ................... 363 50,000
Total .................................... $ 9,022,663

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Mingo County Surface Mine Project (fund 0131, activity 296), Charleston Farmers Market (fund 0131, activity 476), Moorefield Agriculture Center (fund 0131, activity 786), Microbiology Program (fund 0313, activity 785), and Capital Improvements—Total—Surplus (fund 0131, activity 672) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0131, fiscal year 2001, activity 119 ($13,101), fund 0131, fiscal year 2001, activity 137 ($31,500), and fund 0131, fiscal year 2001, activity 296 ($89,175) which shall expire on June 30, 2001.

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

13—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)
Fund 0132 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$447,895</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$7,900</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$167,593</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$354,455</td>
</tr>
<tr>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>$3,305,147</td>
</tr>
<tr>
<td>Maintenance of Flood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control Projects (R)</td>
<td>522</td>
<td>$1,791,606</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,074,596</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Maintenance of Flood Control Projects (fund 0132, activity 522), Soil Conservation Projects (fund 0132, activity 120), Conservation Reserve Enhancement Program (fund 0132, activity 141), and Soil Conservation Projects—Surplus (fund 0132, activity 269) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0132, fiscal year 2001, activity 120 ($194,853) which shall expire on June 30, 2001.

14—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$384,287</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$8,403</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$146,740</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$64,503</td>
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<tr>
<td>Total</td>
<td></td>
<td>$603,933</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>$425,000</td>
</tr>
<tr>
<td>Commissioner's Awards and Programs</td>
<td>737</td>
<td>$87,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$512,300</strong></td>
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</tbody>
</table>

16—Attorney General

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

Fund 0150 FY 2002 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$2,318,787</td>
</tr>
<tr>
<td>Salary of Attorney General</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>39,100</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>677,353</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>491,679</td>
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<tr>
<td>Better Government Bureau (R)</td>
<td>740</td>
<td>259,738</td>
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<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>75,267</td>
</tr>
<tr>
<td>Computer Upgrades (R)</td>
<td>349</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$4,036,924</strong></td>
</tr>
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</table>

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0150, fiscal year 2001, activity 001 ($75,000), fund 0150, fiscal year 2001, activity 010 ($11,806), and fund 0150,
fiscal year 2001, activity 099 (30,000) which shall expire on

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

17—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2002 Org 1600

<table>
<thead>
<tr>
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<td>Personal Services</td>
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<td>Salary of Secretary of State</td>
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<td>65,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
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<td>231,550</td>
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<td>Unclassified (R)</td>
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<td>321,225</td>
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<tr>
<td>Administrative Law Division</td>
<td>880</td>
<td>57,591</td>
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<tr>
<td>Total</td>
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</table>

Any unexpended balances remaining in the appropriations
for Unclassified (fund 0155, activity 099), Technology Im-
provements (fund 0155, activity 599), Administrative Law
Division Improvements (fund 0155, activity 880), and Unclas-
sified–Surplus (fund 0155, activity 097) at the close of the
fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0155, fiscal year 2001, activity 099 ($31,103) and fund 0155, fiscal year 2001, activity 880 ($1,764) which shall expire on June 30, 2001.

18—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2002 Org 1601

1 Unclassified—Total .................. 096 $ 11,640

DEPARTMENT OF ADMINISTRATION

19—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2002 Org 0201

1 Unclassified .................. 099 $ 296,896
2 Pay Equity Reserve ............... 364 200,000
3 BRIM Premium .................. 913 7,524
4 Total .................. $ 504,420

The appropriation for Pay Equity Reserve shall be allocated by the Secretary of Administration in accordance with a collaborative methodology that will be developed and established by state agencies, the division of personnel, and the equal pay commission.

20—Consolidated Public Retirement Board

(WV Code Chapter 5)
Fund 0195 FY 2002 Org 0205

1 Retirement Shortfall ................. 266 $ 0
2 Supplemental Benefits for Annuitants .. 892 3,700,000
3 Total ................................ $ 3,700,000

4 The above appropriations may be transferred to the appro-
5 priate special revenue fund of the Consolidated Public Retire-
6 ment Board for expenditure as determined by the Executive
7 Secretary.

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

21—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2002 Org 0209

1 Personal Services .................. 001 $ 527,460
2 Annual Increment ................... 004 11,090
3 Employee Benefits ................. 010 139,527
4 Unclassified ........................ 099 546,103
5 GAAP Project (R) .................... 125 1,197,617
6 BRIM Premium ...................... 913 52,889
7 Total .............................. 913 $ 2,474,686

8 Any unexpended balance remaining in the appropriation for
9 GAAP Project (fund 0203, activity 125) at the close of the
10 fiscal year 2001 is hereby reappropriated for expenditure during
the fiscal year 2002, with the exception of fund 0203, fiscal year 2001, activity 125 ($110,914) which shall expire on June 30, 2001.

22—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 0583 FY 2002 Org 0210

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<td>Past Due Telephone Account</td>
<td>262</td>
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23—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2002 Org 0211

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<th>Code</th>
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<td>Annual Increment</td>
<td>004</td>
<td>20,300</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>222,180</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>862,693</td>
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<tr>
<td>Fire Service Fee</td>
<td>126</td>
<td>13,440</td>
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<tr>
<td>Capitol Complex -</td>
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<td></td>
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<tr>
<td>Capital Outlay (R)</td>
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<td>0</td>
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<tr>
<td>Total</td>
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<td>$1,665,656</td>
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</table>

Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation—Surplus (fund 0230, activity 675), Capital Improvements—Capitol Complex—Surplus (fund 0230, activity 676), Capitol Complex—Capital Outlay (fund 0230, activity 417), Capitol Complex Master Plan—Total—Surplus (fund 0230, activity 606) and Capitol Building Roof—Total—Surplus (fund 0230, activity 820) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.
24—Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2002 Org 0213

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$668,058</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$16,435</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
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<td>5</td>
<td>Purchasing Card Program</td>
<td>711</td>
<td>$0</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$2,394</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$997,528</td>
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</table>

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

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2002 Org 0217

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$30,250</td>
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To pay expenses for members of the commission on uniform state laws.

26—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2002 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$693,056</td>
</tr>
</tbody>
</table>
2 Annual Increment .................. 004 5,700
3 Employee Benefits ................. 010 180,747
4 Unclassified .......................... 099 40,379
5 RetroPayments ..................... 523 2,000,000
6 Premium Enhancement (R) ........ 346 150,000
7 Total .......................... $ 3,069,882

8 Any unexpended balance remaining in the appropriation for
9 Premium Enhancement (fund 0217, activity 346) at the close of
10 the fiscal year 2001 is hereby reappropriated for expenditure
11 during the fiscal year 2002.
12
13 These funds may be transferred to a special account for the
14 payment of premiums, self-insurance losses, loss adjustment
15 expenses and loss prevention engineering fees and may be
16 transferred to a special account for disbursement for payment
17 of premiums and insurance losses.

27—Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2002 Org 0219

1 Personal Services .................. 001 $ 659,761
2 Annual Increment .................. 004 $ 8,200
3 Employee Benefits .................. 010 $ 192,185
4 Unclassified ...................... 099 $ 169,161
5 BRIM Premium ................... 913 $ 1,376
6 Total ........................ $ 1,030,683

28—Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2002 Org 0220

1 Personal Services .................. 001 $ 226,599
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Activity</th>
<th>Budget</th>
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<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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<td>78,652</td>
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<td>5</td>
<td>BRIM Premium</td>
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<td>1,262</td>
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<tr>
<td>6</td>
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<td></td>
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<td>$366,831</td>
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</table>

#### 29—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2002 Org 0221

<table>
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<th>Description</th>
<th>Fund</th>
<th>Activity</th>
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</thead>
<tbody>
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<td>1</td>
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<td></td>
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<td>2</td>
<td>Annual Increment</td>
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<td></td>
<td>7,550</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
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<td>396,078</td>
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<tr>
<td>5</td>
<td>Appointed Counsel Fees and Public Defender</td>
<td>127</td>
<td></td>
<td>$23,585,497</td>
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<tr>
<td>6</td>
<td>Corporations (R)</td>
<td></td>
<td></td>
<td>30,930</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
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<td>$24,730,658</td>
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</table>

Any unexpended balances remaining in the above appropriations for Unclassified (fund 0226, activity 099) and Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0226, fiscal year 2000, activity 127 ($764,514) which shall expire on June 30, 2001.

#### 30—Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2002 Org 0224

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>Activity</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
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<td>$4,516</td>
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</tbody>
</table>
31—Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2002 Org 0225

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

32—West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2002 Org 0228

1 Forensic Medical Examinations (R) . . . . 683 $ 194,336
2 Federal Funds/Grant Match (R) . . . . . . . 749 130,697
3 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 325,033

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683) and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0557, fiscal year 2001, activity 683 ($10,020) which shall expire on June 30, 2001.

33—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2002 Org 0230

1 Unclassified—Total (R) . . . . . . . . . . . . . . . . . . . . . . . 096 $ 3,440,085
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0588, activity 096) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0557, fiscal year 2001, activity 096 ($60,003) which shall expire on June 30, 2001.

**DEPARTMENT OF EDUCATION**

**34—State Department of Education—**

*School Lunch Program*

(WV Code Chapters 18 and 18A)

**Fund 0303 FY 2002 Org 0402**

<table>
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<th>Code</th>
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<td>$1,764,763</td>
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<td><strong>Total</strong></td>
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</table>

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

(WV Code Chapters 18 and 18A)

**Fund 0306 FY 2002 Org 0402**

<table>
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<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>$9,150</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>$223,161</td>
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<tr>
<td>BRIM Premium</td>
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<td>$22,580</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td>$970,404</td>
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###appropriations

36—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2002 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
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<tbody>
<tr>
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<td>001</td>
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<td>996,496</td>
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<td>Unclassified</td>
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<td>4,450,000</td>
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<td>WV Education Information System</td>
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<td>3,863,282</td>
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<td>34/1000 Waiver</td>
<td>139</td>
<td>300,000</td>
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<td>National Teacher Certification</td>
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<td>92,294</td>
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<td>Allowance for County Transfers</td>
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<td>Curriculum Technology</td>
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<td>Resource Center</td>
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<td>Character Education Initiative</td>
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<tr>
<td>State-Wide Hotline</td>
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<tr>
<td>31</td>
<td>Adult Advisory Council</td>
<td>621</td>
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<tr>
<td>32</td>
<td>Foreign Student Education (R)</td>
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</tr>
<tr>
<td>33</td>
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<tr>
<td>34</td>
<td>Principals Mentorship</td>
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<tr>
<td>35</td>
<td>Educational Enhancements</td>
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<td>36</td>
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<tr>
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<td>Marshall University Graduate</td>
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<tr>
<td>39</td>
<td>College Writing Project</td>
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<tr>
<td>40</td>
<td>Webster County Board of Education/</td>
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<tr>
<td>41</td>
<td>Hacker Valley</td>
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<tr>
<td>42</td>
<td>BRIM Premium</td>
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<td>43</td>
<td>Early Retirement Notification Incentive</td>
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<td>44</td>
<td>WV Literacy Council</td>
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<tr>
<td>45</td>
<td>Tax Loss–Brooke County</td>
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<tr>
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<td>FBI Checks</td>
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<tr>
<td>47</td>
<td>Principals’ Leadership Training</td>
<td>373</td>
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<tr>
<td>48</td>
<td>State Science Fair</td>
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<tr>
<td>49</td>
<td>Total</td>
<td></td>
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</table>

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

Any unexpended balances remaining in the appropriations for National Teacher Certification (fund 0313, activity 161), Foreign Student Education (fund 0313, activity 636) and Increased Enrollment (fund 0313, activity 140) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

37—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2002 Org 0402
Ch. 1]  

**APPROPRIATIONS**  

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
<td>159</td>
<td>$7,336,561</td>
</tr>
<tr>
<td>2</td>
<td>Special Education—Institutions</td>
<td>160</td>
<td>$3,232,618</td>
</tr>
<tr>
<td>3</td>
<td>Educational Programs at Beckley Center</td>
<td>192</td>
<td>$362,417</td>
</tr>
<tr>
<td>4</td>
<td>Education of Juveniles Held in Predispositional</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Juvenile Detention Centers</td>
<td>302</td>
<td>$575,644</td>
</tr>
<tr>
<td>6</td>
<td>Education of Institutionalized Juveniles and Adults</td>
<td>472</td>
<td>$6,536,596</td>
</tr>
<tr>
<td>7</td>
<td>Potomac Center</td>
<td>810</td>
<td>$512,805</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$18,556,641</td>
</tr>
</tbody>
</table>

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

38—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2002 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Other Current Expenses</td>
<td>022</td>
<td>$119,611,103</td>
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<tr>
<td>2</td>
<td>Professional Educators</td>
<td>151</td>
<td>$725,403,886</td>
</tr>
<tr>
<td>3</td>
<td>Service Personnel</td>
<td>152</td>
<td>$238,473,581</td>
</tr>
<tr>
<td>4</td>
<td>Fixed Charges</td>
<td>153</td>
<td>$86,941,748</td>
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<tr>
<td>5</td>
<td>Transportation</td>
<td>154</td>
<td>$35,993,918</td>
</tr>
<tr>
<td>6</td>
<td>Administration</td>
<td>155</td>
<td>$7,724,350</td>
</tr>
<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>$33,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowances</td>
<td></td>
<td>$1,247,148,586</td>
</tr>
<tr>
<td>9</td>
<td>Less Local Share</td>
<td></td>
<td>$(277,375,497)</td>
</tr>
<tr>
<td>10</td>
<td>Total Basic State Aid</td>
<td></td>
<td>$969,773,089</td>
</tr>
<tr>
<td>11</td>
<td>Public Employees’ Insurance Match</td>
<td>012</td>
<td>$144,286,514</td>
</tr>
<tr>
<td>12</td>
<td>Teachers’ Retirement System</td>
<td>019</td>
<td>$247,374,252</td>
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<tr>
<td>13</td>
<td>School Building Authority</td>
<td>453</td>
<td>$23,345,905</td>
</tr>
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<td>14</td>
<td>Total</td>
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<td>$1,384,779,760</td>
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</table>
39—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund **0390** FY **2002** Org **0402**

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 897,672</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>13,548</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>300,283</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,100,915</td>
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<tr>
<td>5</td>
<td>Wood Products—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Forestry Vocational Program</td>
<td>146</td>
<td>63,024</td>
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<tr>
<td>7</td>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>139,300</td>
</tr>
<tr>
<td>8</td>
<td>Vocational Aid</td>
<td>148</td>
<td>13,653,842</td>
</tr>
<tr>
<td>9</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>3,076,481</td>
</tr>
<tr>
<td>10</td>
<td>Equipment Replacement</td>
<td>150</td>
<td>0</td>
</tr>
<tr>
<td>11</td>
<td>Program Modernization</td>
<td>305</td>
<td>700,000</td>
</tr>
<tr>
<td>12</td>
<td>Aquaculture Support</td>
<td>769</td>
<td>208,441</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td></td>
<td>$20,153,506</td>
</tr>
</tbody>
</table>

40—State Board of Education—

Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

Fund **0573** FY **2002** Org **0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 482,843</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,600</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>143,248</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>279,849</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 909,540</td>
</tr>
</tbody>
</table>
41—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2002 Org 0403

1  Personal Services .................. 001  $ 6,347,281
2  Annual Increment .................. 004  4,000
3  Employee Benefits ................. 010  2,428,002
4  Unclassified ....................... 099  1,533,656
5  BRIM Premium ...................... 913  42,812
6  Total ............................ 10,355,751

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment—Surplus (fund 0320, activity 677) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

DEPARTMENT OF EDUCATION AND THE ARTS

42—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2002 Org 0431

1  Unclassified (R) ..................... 099  $ 698,892
2  Center for Professional Development (R) .......... 115  1,756,437
3  Commission for National and Community Service .......... 193  0
4  Operation Safe Schools/Hotline Grants 194  0
5  Center for Professional Development—
   Principals’ Academy (R) ........ 415  0
6  Technical Preparation Program (R) .... 440  0
7  Community Schools/Mini Grants (R) .. 530  0
11 Hospitality Training .................... 600  533,500
12 BRIM Premium .......................... 913  1,515
13 Total ...................................  $ 2,990,344

Any unexpended balances remaining in the appropriations
for Unclassified (fund 0294, activity 099), Center for Profes-
sional Development (fund 0294, activity 115), Center for
Professional Development—Principals’ Academy (fund 0294,
activity 415), Technical Preparation Program (fund 0294,
activity 440) and Community Schools/Mini Grants (fund 0294,
activity 530) at the close of the fiscal year 2001 are hereby
reappropriated for expenditure during the fiscal year 2002, with
the exception of fund 0294, fiscal year 2001 activity 115
($54,254); fund 0294, fiscal year 2001, activity 415 ($15,000);
fund 0294, fiscal year 2001, activity 440 ($27,972); fund 0294,
fiscal year 2001, activity 530 ($39,539); fund 0294, fiscal year
2001, activity 194 ($9,000) which shall expire on June 30,

43—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2002 Org 0432

1 Personal Services ...................... 001  $ 2,141,322
2 Annual Increment ...................... 004  33,900
3 Employee Benefits ..................... 010  743,441
4 Martin Luther King, Jr.
5 Holiday Celebration ................... 031  0
6 Unclassified ............................ 099  487,309
7 Cultural Center Rent ................... 267  0
8 Veteran’s Memorial - Washington, DC 268  0
9 Grants for Competitive Arts Programs 624  0
10 Culture and History Programming ..... 732  300,014
11 BRIM Premium .......................... 913  27,937
12 Total .................................  $ 3,733,923
Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

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

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

44—Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2002 Org 0433

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>Personal Services</td>
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<td>$1,140,479</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$33,300</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>$279,997</td>
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<tr>
<td>Books and Films</td>
<td>179</td>
<td>$0</td>
</tr>
<tr>
<td>Services to State Institutions</td>
<td>180</td>
<td>$0</td>
</tr>
<tr>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>$42,729</td>
</tr>
<tr>
<td>Cultural Center Rent</td>
<td>267</td>
<td>$0</td>
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<tr>
<td>Libraries—Special Projects</td>
<td>625</td>
<td>$0</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$17,126</td>
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<tr>
<td>Total</td>
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<td>$1,910,357</td>
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</table>
45—*Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2002 Org 0439

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,336,259</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>59,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,087,674</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,139,117</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>32,547</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$5,654,797</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Equipment—Surplus (fund 0300, activity 341) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

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

46—*Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—*

*Central Office—*

*Control Account*

(WV Code Chapters 18B and 18C)

Fund 0333 FY 2002 Org 0452

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any unexpended balances remaining in the appropriations for Tuition Contract Program (fund 0333, activity 165), and Higher Education Technology Initiative - Surplus (fund 0333, activity 508) at the close of the fiscal year are hereby reappropriated for expenditure during the fiscal year 2002.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Any balances so reappropriated are redesignated into the Higher Education Policy Commission - Administration (organization 0441), Higher Education Policy Commission - Administration Control Account (fund 0589).

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

Control Account

(WV Code Chapter 18B)

Fund 0327 FY 2002 Org 0461

Any unexpended balances remaining in the appropriations for Marshall University - Southern WV Community and Technical College 2 + 2 Program (fund 0327, activity 170), Jackson’s Mill (fund 0327, activity 461), Marshall and West Virginia University Faculty and Course Development International Study Project (fund 0327, activity 549), Marshall University - Forensic Lab (fund 0327, activity 572), Coal and Energy Research Bureau (fund 0327, activity 827), Jackson’s Mill Surplus (fund 0327, activity 842), and WVU College of Engineering and Mineral Resources - Diesel Study (fund 0327, activity 852) at the close of fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Higher Education Policy Commission - System Control Account (fund 0586).

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

University of West Virginia—

Health Sciences Account
Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Graduate Medical Education (fund 0323, activity 197), Marshall University - Center for Rural Health (fund 0323, activity 198), School of Osteopathic Medicine - Capital Improvement (fund 0323, activity 204), Correctional Telemedicine Project (fund 0323, activity 406), WVU Charleston Division - Poison Control Hot Line (fund 0323, activity 510), Capital Outlay and Equipment (fund 0323, activity 542), and Rural Health Initiative Site Support Program (fund 0323, activity 853), at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - Health Sciences (organization 0477), Higher Education Policy Commission - Health Sciences Control Account (fund 0590).

49—State Board of Rehabilitation—

Division of Rehabilitation Services

(WV Code Chapter 18)

Personal Services ....................... 001  $4,493,386
Annual Increment .......................... 004  124,961
Employee Benefits ....................... 010  1,705,731
Unclassified ............................... 099  150,000
Case Services ............................. 162  2,220,603
Workshop Development .................... 163  1,799,000
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Supported Employment</td>
<td>206</td>
<td>121,250</td>
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<tr>
<td>Extended Services</td>
<td>301</td>
<td>300,000</td>
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<tr>
<td>Capital Outlay - Restrooms</td>
<td>407</td>
<td>291,000</td>
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<tr>
<td>Ron Yost Personal Assistance Fund</td>
<td>813</td>
<td>242,500</td>
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<tr>
<td>Traumatic Brain and Spinal Cord Injury</td>
<td>913</td>
<td>45,463</td>
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<tr>
<td>Total</td>
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<td>$11,493,894</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Technology—Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002 and may be transferred to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2002 Org 0501

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$138,065</td>
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</tbody>
</table>

51—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2002 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$7,850,082</td>
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<td>Annual Increment</td>
<td>004</td>
<td>131,907</td>
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<td>Appropriations</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$099</td>
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<tr>
<td>5</td>
<td>Appalachian State Low Level Radioactive Waste Commission</td>
<td>$185</td>
</tr>
<tr>
<td>6</td>
<td>Safe Drinking Water Program</td>
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<tr>
<td>7</td>
<td>Pet Scan Support</td>
<td>$209</td>
</tr>
<tr>
<td>8</td>
<td>Women, Infants and Children</td>
<td>$210</td>
</tr>
<tr>
<td>9</td>
<td>Basic Public Health Services Support</td>
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<td>10</td>
<td>Emergency Response Entities Support</td>
<td>$213</td>
</tr>
<tr>
<td>11</td>
<td>Financial Assistance for Primary Health Materials</td>
<td>$215</td>
</tr>
<tr>
<td>12</td>
<td>County Wellness Institute Programs</td>
<td>$216</td>
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<tr>
<td>13</td>
<td>Early Intervention</td>
<td>$223</td>
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<tr>
<td>14</td>
<td>Cancer Registry</td>
<td>$225</td>
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<tr>
<td>15</td>
<td>Primary Care Centers—</td>
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<tr>
<td>16</td>
<td>Mortgage Finance</td>
<td>$413</td>
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<tr>
<td>17</td>
<td>Black Lung Clinics</td>
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<tr>
<td>18</td>
<td>Pediatric Dental Services</td>
<td>$550</td>
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<tr>
<td>19</td>
<td>Vaccine for Children</td>
<td>$551</td>
</tr>
<tr>
<td>20</td>
<td>Adult Influenza Vaccine</td>
<td>$552</td>
</tr>
<tr>
<td>21</td>
<td>Tuberculosis Control</td>
<td>$553</td>
</tr>
<tr>
<td>22</td>
<td>Regional EMS Entities</td>
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<tr>
<td>23</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts</td>
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</tr>
<tr>
<td>24</td>
<td>Epidemiology Support</td>
<td>$626</td>
</tr>
<tr>
<td>25</td>
<td>Rural EMS Equipment and Training</td>
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</tr>
<tr>
<td>26</td>
<td>Primary Care Support</td>
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<tr>
<td>27</td>
<td>State Aid to Local Health Departments</td>
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</tr>
<tr>
<td>28</td>
<td>Health Right Free Clinics</td>
<td>$727</td>
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<tr>
<td>29</td>
<td>Osteoporosis Prevention Fund</td>
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<tr>
<td>30</td>
<td>State EMS Coordinator</td>
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</tr>
<tr>
<td>31</td>
<td>EMS Training for Children</td>
<td>$739</td>
</tr>
<tr>
<td>32</td>
<td>Emergency Response Entities—Special</td>
<td>$822</td>
</tr>
</tbody>
</table>
38 BRIM Premium .................. 913 161,860
39 CARDIAC Project ................. 375 220,000
40 Primary Care Centers—
41 Financial Assistance ............ 376 350,000
42 State EMS Technical Assistance ... 379 1,408,929
43 EMS Agency Uncompensated
44 Care Support .................... 380 250,000
45 EMS Program for Children ....... 381 50,000
46 Statewide EMS Program Support ... 383 560,664
47 Total .......................... $ 53,787,838
48
49 Any unexpended balances remaining in the appropriations
50 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
51 Maternal and Child Health Clinics, Clinicians and Medical
52 Contracts and Fees (fund 0407, activity 575) at the close of the
53 fiscal year 2001 are hereby reappropriated for expenditure
54 during the fiscal year 2002 with the exception of fund 0407,
55 fiscal year 2001, activity 575 ($598,011) which shall expire on
57
58 From the Maternal and Child Health Clinics, Clinicians,
59 and Medical Contracts and Fees line item, $400,000 shall be
60 transferred to the Breast and Cervical Cancer Diagnostic
61 Treatment Fund.

52—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2002 Org 0506

1 Personal Services .................. 001 $ 553,928
2 Annual Increment .................. 004 10,300
3 Employee Benefits ................. 010 231,634
4 Special Olympics .................. 208 26,074
5 Behavioral Health Program—
6 Unclassified (R) ................... 219 26,252,137
<table>
<thead>
<tr>
<th>Appropriation Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Family Support Act</td>
<td>221</td>
<td>1,093,339</td>
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<tr>
<td>Institutional Facilities Operations</td>
<td>335</td>
<td>20,028,484</td>
</tr>
<tr>
<td>Colin Anderson Community Placement (R)</td>
<td>803</td>
<td>3,365,284</td>
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<tr>
<td>Renaissance Program</td>
<td>804</td>
<td>200,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>875,704</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 52,636,884</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Behavioral Health Program—Unclassified (fund 0525, activity 219) and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0525, fiscal year 2001, activity 219 ($719,874) and fund 0525, fiscal year 2001, activity 803 ($68,679) which shall expire on June 30, 2001.

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

From the Colin Anderson Community Placement (fund 0525, activity 803) funds may be both expended for the community placement costs of the Colin Anderson clients and transferred to the Medical Services Program Fund to pay the Medicaid state share of the Medicaid cost of Colin Anderson clients in the community.
Additional funds have been appropriated in fund 5124, fiscal year 2002, organization 0506 and fund 5156, fiscal year 2002, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

53—Division of Health—

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2002 Org 0506

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

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

54—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2002 Org 0510

1 Personal Services ...................... 001 $ 622,810
2 Annual Increment ...................... 004 13,500
3 Employee Benefits .................... 010 230,735
4 Unclassified ......................... 099 246,794
5 Anti-Hate Program and
6 Human Rights Summit ............... 815 18,000
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
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</tbody>
</table>

55—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2002 Org 0511

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Child Care Development</td>
<td>144</td>
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<tr>
<td>6</td>
<td>Medical Services Contracts and Office of</td>
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</tr>
<tr>
<td>7</td>
<td>Managed Care</td>
<td>183</td>
</tr>
<tr>
<td>8</td>
<td>Medical Services</td>
<td>189</td>
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<td>9</td>
<td>Women’s Commission</td>
<td>191</td>
</tr>
<tr>
<td>10</td>
<td>Social Services</td>
<td>195</td>
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<tr>
<td>11</td>
<td>Family Preservation Program</td>
<td>196</td>
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<tr>
<td>12</td>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
<td>455</td>
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<tr>
<td>13</td>
<td>Child Protective Services</td>
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<tr>
<td>14</td>
<td>Case Workers</td>
<td>468</td>
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<td>15</td>
<td>Medical Services Trust Fund Transfer</td>
<td>512</td>
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<tr>
<td>16</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
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<tr>
<td>17</td>
<td>Child Welfare System</td>
<td>603</td>
</tr>
<tr>
<td>18</td>
<td>Commission for the Deaf and</td>
<td></td>
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<tr>
<td>19</td>
<td>Hard of Hearing</td>
<td>704</td>
</tr>
<tr>
<td>20</td>
<td>Child Support Enforcement</td>
<td>705</td>
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<tr>
<td>21</td>
<td>Medicaid Auditing</td>
<td>706</td>
</tr>
<tr>
<td>22</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>707</td>
</tr>
<tr>
<td>23</td>
<td>Child Care—</td>
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<tr>
<td>24</td>
<td>Maintenance of Effort and Match</td>
<td>708</td>
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<tr>
<td>25</td>
<td>Grants for Licensed Domestic Violence</td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>Activity</td>
<td>Appropriation</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----------</td>
<td>---------------</td>
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<tr>
<td>Programs and Statewide Prevention</td>
<td>750</td>
<td>1,000,000</td>
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<tr>
<td>Indigent Burials (R)</td>
<td>851</td>
<td>1,274,400</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>667,631</td>
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<tr>
<td>Domestic Violence Legal Services Fund</td>
<td>384</td>
<td>150,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$341,172,059</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Indigent Burials (fund 0403, activity 851) at the close of fiscal year 2001 is hereby reappropriated for expenditure during fiscal year 2002.

The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by Chapter 16, Article 5Q, of the Code.

The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

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

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

56—Department of Military Affairs and Public Safety—
### Appropriations

**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0430 FY 2002 Org 0601**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 697,287</td>
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<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$ 3,842</td>
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<tr>
<td>3</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 701,129</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Bland Memorial Fund (fund 0430, activity 332) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002 and shall be transferred to the Law- Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003) as provided by Chapter 15, Article 11 of the Code.

**57—Adjutant General—**

**State Militia**

(WV Code Chapter 15)

**Fund 0433 FY 2002 Org 0603**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 376,639</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$ 7,750</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$ 131,218</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$12,939,100</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$14,457</td>
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<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$13,469,164</strong></td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0433, fiscal year...

From the above appropriation an amount approved by the adjutant general and the secretary of military affairs and public safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

### 58—West Virginia Parole Board

(WV Code Chapter 62)

<table>
<thead>
<tr>
<th>Fund 0440 FY 2002 Org 0605</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001</td>
</tr>
<tr>
<td>2  Annual Increment ........... 004</td>
</tr>
<tr>
<td>3  Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4  Unclassified ............... 099</td>
</tr>
<tr>
<td>5  Salaries of Members of West Virginia Parole Board .......... 227</td>
</tr>
<tr>
<td>7  BRIM Premium ............... 913</td>
</tr>
<tr>
<td>8  Total ......................</td>
</tr>
</tbody>
</table>

### 59—Office of Emergency Services

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Fund 0443 FY 2002 Org 0606</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001</td>
</tr>
<tr>
<td>2  Annual Increment ........... 004</td>
</tr>
<tr>
<td>3  Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4  Unclassified ............... 099</td>
</tr>
<tr>
<td>5  Federal Emergency Management Agency Match (R) ............... 188</td>
</tr>
<tr>
<td>7  Community Emergency Response .... 220</td>
</tr>
<tr>
<td>8  Flood Reparations .......... 400</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriations for Federal Emergency Management Agency Match (fund 0443, activity 188), Unclassified—Surplus (fund 0443, activity 097), at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0443, fiscal year 2001, activity 188 ($1,425) which shall expire on June 30, 2001.

60—Division of Corrections—

Central Office

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

Fund 0446 FY 2002 Org 0608

1 Personal Services ..................... 001 $ 377,868
2 Annual Increment ...................... 004 5,475
3 Employee Benefits .................... 010 115,707
4 Unclassified .......................... 099 98,162
5 Management Information System ...... 398 2,070,000
6 Total ................................ $ 2,667,212

61—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2002 Org 0608

1 Personal Services ..................... 001 $ 1,182,630
2 Employee Benefits .................... 010 202,821
3 Unclassified .......................... 099 450,000
### APPROPRIATIONS

| 4 Payments to Counties and/or Regional Jails | 229 | 9,000,000 |
| 5 Charleston Work Release | 456 | 805,229 |
| 6 Beckley Correctional Center | 490 | 879,268 |
| 7 Huntington Work Release | 495 | 685,920 |
| 8 Anthony Center | 504 | 3,881,352 |
| 9 Huttonsville Correctional Center | 514 | 12,912,723 |
| 10 Northern Correctional Facility | 534 | 5,708,825 |
| 11 Inmate Medical Expenses | 535 | 9,110,767 |
| 12 Pruntytown Correctional Center | 543 | 5,172,369 |
| 13 Corrections Academy | 569 | 953,311 |
| 14 Parole Services | 686 | 1,908,636 |
| 15 Special Services | 687 | 2,037,486 |
| 16 St. Mary’s Correctional Facility | 881 | 7,864,230 |
| 17 Denmar Correctional Facility | 882 | 3,399,737 |
| 18 Ohio County Correctional Facility | 883 | 1,126,069 |
| 19 Mt. Olive Correctional Facility | 888 | 15,485,255 |
| 20 BRIM Premium | 913 | 560,889 |
| 21 Total | | **$83,327,517** |

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

From the above appropriation to Unclassified, on July 1, 2001, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual
payments for such purchases shall not be required until such credits have been completely expended.

62—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2002 Org 0612

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fund 0453 FY 2002</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>27,666,436</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>154,250</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,204,519</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>5,228,372</td>
</tr>
<tr>
<td>COPS Program Federal Match</td>
<td>327</td>
<td>1,457,090</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Barracks Maintenance and Construction (R)</td>
<td>494</td>
<td>1,719,388</td>
</tr>
<tr>
<td>Other Equipment (R)</td>
<td>558</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>20,016,162</td>
</tr>
<tr>
<td>Handgun Administration Expense</td>
<td>747</td>
<td>68,276</td>
</tr>
<tr>
<td>Debt Payment/Capital Outlay, Renovations,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repair to Barracks (R)</td>
<td>751</td>
<td>0</td>
</tr>
<tr>
<td>COPS—Telecommunicators Match</td>
<td>816</td>
<td>0</td>
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<tr>
<td>Automated Fingerprint</td>
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<td></td>
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<tr>
<td>Identification System</td>
<td>898</td>
<td>450,158</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>1,700,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>66,664,651</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Communications and Other Equipment (fund 0453, activity 558) and Debt Payment/Capital Outlay, Renovations, Repairs to Barracks (fund 0453, activity 751) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0453, fiscal year 2001, activity 558 ($384,559) and fund 0453, fiscal
year 2001, activity 751 ($1,365,000) which shall expire on June 30, 2001.

63—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2002 Org 0613

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$773,001</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>18,300</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>357,475</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>16,570</td>
<td></td>
</tr>
<tr>
<td>5 Veterans’ Field Offices</td>
<td>228</td>
<td>129,692</td>
<td></td>
</tr>
<tr>
<td>6 Veterans’ Toll Free Assistance Line</td>
<td>328</td>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td>7 Veterans’ Reeducation Assistance (R)</td>
<td>329</td>
<td>216,141</td>
<td></td>
</tr>
<tr>
<td>8 Veterans’ Field Office Improvements (R)</td>
<td>331</td>
<td>57,550</td>
<td></td>
</tr>
<tr>
<td>9 Veterans’ Grant Program</td>
<td>342</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>10 Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
<td></td>
</tr>
<tr>
<td>11 BRIM Premium</td>
<td>913</td>
<td>23,741</td>
<td></td>
</tr>
<tr>
<td>12 Women’s Veterans’ Monument</td>
<td>385</td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>13 Total</td>
<td></td>
<td>$1,867,470</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Field Office Improvements (fund 0456, activity 331), and Veterans’ Monuments (fund 0456, activity 817) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0456, fiscal year 2001, activity 329 ($53,859) which shall expire on June 30, 2001.

64—Division of Veterans’ Affairs—

Veterans’ Home

(WV Code Chapter 9A)
<table>
<thead>
<tr>
<th>Fund 0460 FY 2002 Org 0618</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001  $ 640,165</td>
</tr>
<tr>
<td>2  Annual Increment .......... 004  13,800</td>
</tr>
<tr>
<td>3  Employee Benefits ........ 010  279,220</td>
</tr>
<tr>
<td>4  Unclassified .............. 099  150,737</td>
</tr>
<tr>
<td>5  Total ..................... $ 1,083,922</td>
</tr>
</tbody>
</table>

65—Fire Commission

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 0436 FY 2002 Org 0619</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001  $ 595,505</td>
</tr>
<tr>
<td>2  Annual Increment .......... 004  11,000</td>
</tr>
<tr>
<td>3  Employee Benefits ........ 010  200,567</td>
</tr>
<tr>
<td>4  Unclassified .............. 099  170,176</td>
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<tr>
<td>5  BRIM Premium .............. 913  20,940</td>
</tr>
<tr>
<td>6  Total ..................... $ 998,188</td>
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</table>

66—Division of Criminal Justice Services

(Executive Order)

<table>
<thead>
<tr>
<th>Fund 0546 FY 2002 Org 0620</th>
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</thead>
<tbody>
<tr>
<td>1  Personal Services .......... 001  $ 206,875</td>
</tr>
<tr>
<td>2  Annual Increment .......... 004  2,983</td>
</tr>
<tr>
<td>3  Employee Benefits ........ 010  75,375</td>
</tr>
<tr>
<td>4  Unclassified .............. 099  145,667</td>
</tr>
<tr>
<td>5  Community Corrections - First Circuit</td>
</tr>
<tr>
<td>(one-time) .................... 387  300,000</td>
</tr>
<tr>
<td>7  Statistical Analysis Program .......... 597  52,083</td>
</tr>
<tr>
<td>8  BRIM Premium .............. 913  58</td>
</tr>
<tr>
<td>9  Total ..................... $ 783,041</td>
</tr>
</tbody>
</table>
### 67—Division of Juvenile Services

(WV Code Chapter 49)

**Fund 0570 FY 2002 Org 0621**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$13,011,332</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>62,350</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>4,859,693</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>3,519,751</td>
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<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>17,587</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td><strong>$21,470,713</strong></td>
</tr>
</tbody>
</table>

Any unexpected balances remaining the appropriation for Unclassified (fund 0570, activity 099) at the close of fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002 with the exception of fund 0570, fiscal year 2001, activity 099 ($582,069) which shall expire on June 30, 2001.

### 68—Division of Protective Services

(WV Code Chapter 15)

**Fund 0585 FY 2002 Org 0622**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$469,714</td>
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<tr>
<td>2</td>
<td>Equipment (R)</td>
<td>070</td>
<td>504,958</td>
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<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td><strong>$974,672</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Equipment (fund 0585, activity 070) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0585, fiscal year 2001, activity 070 ($30,042) which shall expire on June 30, 2001.
## DEPARTMENT OF TAX AND REVENUE

### 69—Department of Tax and Revenue—

**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0465 FY 2002 Org 0701**

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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### 70—Tax Division

(WV Code Chapter 11)

**Fund 0470 FY 2002 Org 0702**

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<td>Personal Services</td>
<td>001</td>
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<td>7,433,775</td>
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Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442), Automation Project—Total—Surplus (fund 0470, activity 673) and Property Tax Valuation and Assessment System (fund 0470, activity 477) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

### 71—Division of Professional and Occupational Licenses—

**State Athletic Commission**
(WV Code Chapter 29)

Fund 0523 FY 2002 Org 0933

1 Unclassified .......................... 099 $ 6,738
2 BRIM Premium .......................... 913 1,262
3 Total ................................. $ 8,000

DEPARTMENT OF TRANSPORTATION

72—State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2002 Org 0804

1 Unclassified .......................... 099 $ 2,645,072
2 BRIM Premium .......................... 913 8,172
3 Total ................................. $ 2,653,244

73—Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2002 Org 0805

1 Unclassified (R) .......................... 099 $ 1,024,693
2 Federal Funds/Grant Match (R) ........ 749 0
3 Grant Match ............................ 388 1,067,000
4 BRIM Premium .......................... 913 216
5 Total ................................. $ 2,091,909

6 Any unexpended balances remaining in the appropriations
7 for Unclassified (fund 0510, activity 099) and Federal
8 Funds/Grant Match (fund 0510, activity 749) at the close of the
9 fiscal year 2001 are hereby reappropriated for expenditure
10 during the fiscal year 2002, with the exception of fund 0510,
11 fiscal year 2001, activity 099 ($27,890) and fund 0510, fiscal
year 2001, activity 749 ($33,000) which shall expire on June 30, 2001.

74—Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2002 Org 0806

1 Unclassified—Total (R) ............... 096 $ 995,753

Any unexpended balances remaining in the appropriation for Unclassified—Total (fund 0581, activity 096) and Port Authority (fund 0581, activity 443) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0581, fiscal year 2001, activity 096 ($17,866) which shall expire on June 30, 2001.

75—Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2002 Org 0807

1 Unclassified (R) ...................... 099 $ 1,666,162
2 Civil Air Patrol ...................... 234 86,952
3 Potomac Highlands Airport Authority .. 444 0
4 Total .......................... $ 1,753,114

Any unexpended balances remaining in the appropriation for Unclassified (fund 0582, activity 099) and Unclassified—Total (fund 0582, activity 096) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0582, fiscal year 2001, activity 099 ($27,038) which shall expire on June 30, 2001.
### BUREAU OF COMMERCE

#### 76—Division of Forestry

(WV Code Chapter 19)

Fund **0250 FY 2002 Org 0305**

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<td>Employee Benefits</td>
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<tr>
<td>Aerial Tanker Airplanes</td>
<td>752</td>
<td>200,000</td>
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<td><strong>$2,595,624</strong></td>
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Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

#### 77—Geological and Economic Survey

(WV Code Chapter 29)

Fund **0253 FY 2002 Org 0306**

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<td>326,496</td>
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<tr>
<td>Mineral Mapping System (R)</td>
<td>207</td>
<td>1,397,350</td>
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<td>Geographic Information System (R)</td>
<td>214</td>
<td>303,125</td>
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<tr>
<td>Computer Upgrade</td>
<td>349</td>
<td>1,125</td>
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<td>BRIM Premium</td>
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Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207),
Geographic Information System (fund 0253, activity 214) and Computer Upgrade—Surplus (fund 0253, activity 874) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0253, fiscal year 2001, activity 207 ($115,001) which shall expire on June 30, 2001.

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

78—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2002 Org 0307

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<td>West Virginia Steel Advisory</td>
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<td>Partnership Grants (R)</td>
<td>131</td>
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<td>National Youth Science Camp</td>
<td>132</td>
<td>194,000</td>
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<tr>
<td>Local Economic Development</td>
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<td></td>
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<tr>
<td>Partnerships (R)</td>
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<td>1,600,500</td>
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<td>ARC Assessment</td>
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<td>167,308</td>
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<tr>
<td>Institute for Software Research</td>
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<td>Mid-Atlantic Aerospace Complex</td>
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<td>Guaranteed Work Force Grant (R)</td>
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<td>Sunny Day Fund</td>
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<td>Advantage Valley</td>
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<tr>
<td>Chemical Alliance Zone</td>
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<td>WV High Tech Consortium</td>
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<tr>
<td>Economic Development Assistance</td>
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<tr>
<td>Small Business Financial Assistance (R)</td>
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</table>
20 Robert C. Byrd Institute for Advanced/
Flexible Manufacturing—Technology
22 Outreach and Programs for
Environmental and Advanced
24 Technologies .......................... 367 700,000
25 Industrial Park Assistance (R) ........ 480 1,358,000
26 WV Film Development Office ......... 498 103,273
27 Leverage Technology and Small Business
28 Development Program (R) ............ 525 824,500
29 International Offices (R) .............. 593 926,966
30 WV Manufacturing Extension
31 Partnership ............................ 731 194,000
32 Small Business Work Force (R) ....... 735 363,686
33 Polymer Alliance ...................... 754 97,000
34 National Institute of Chemical Studies. 805 97,000
35 Local Economic Development
36 Assistance (R) .......................... 819 7,000,000
37 Community College Workforce
38 Development (R) ...................... 878 827,500
39 BRIM Premium ........................... 913 1,464
40 Total ................................. $31,133,417

Any unexpended balances remaining in the appropriations
for Partnership Grants (fund 0256, activity 131), Guaranteed
Work Force Grant (fund 0256, activity 242), Local Economic
Development Partnerships (fund 0256, activity 133), European
Trade and Tourism Office (fund 0256, activity 763), Local
Economic Development Assistance (fund 0256, activity 819),
Small Business Financial Assistance (fund 0256, activity 360),
Industrial Park Assistance (fund 0256, activity 480), Leverage
Technology and Small Business Development Program (fund
0256, activity 525), Small Business Work Force (fund 0256,
activity 735), International Offices (fund 0256, activity 593),
Office of Coalfield Community Development (fund 0256,
activity 326), Community College Workforce Development
(fund 0256, activity 878), Economic Development Assistance
2922  APPROPRIATIONS  [Ch. 1

(fund 0256, activity 900) and Technology Initiatives (fund 0256, activity 901) at the close of the fiscal year 2000 are hereby reappropriated for expenditure during the fiscal year 2002, with the exception of fund 0256, fiscal year 2001, activity 133 ($158,000); fund 0256, fiscal year 2001, activity 360 ($45,500); fund 0256, fiscal year 2001, activity 525 ($99,655); fund 0256, fiscal year 2001, activity 593 ($65,000); fund 0256, fiscal year 2001, activity 735 ($10,000); fund 0256, fiscal year 2001, activity 819 ($370,000); fund 0256, fiscal year 2001, activity 878 ($22,500); fund 0256, fiscal year 2001, activity 480 ($171,500) which shall expire on June 30, 2001.

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

79—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2002 Org 0308

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Any unexpended balance remaining in the appropriation for Computer/Technology Upgrades (fund 0260, activity 322) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

80—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2002 Org 0310

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<th>Amount</th>
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<tr>
<td>Nongame Wildlife</td>
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<td>Litter Control Conservation Officers</td>
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<td>West Virginia Stream Partners Program</td>
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<td>Upper Mud River Flood Control</td>
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<td>Law Enforcement</td>
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</table>

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

81—Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2002 Org 0314

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<td>BRIM Premium</td>
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</table>

82—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2002 Org 0319

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</table>

83—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2002 Org 0320

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DEPARTMENT OF ENVIRONMENT

84—Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2002 Org 0311

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<tr>
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<tr>
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85—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Fund 0263 FY 2002 Org 0313

1 West Virginia’s Contribution to the
2 Interstate Commission
3 on Potomac River Basin—Total . . . 134 $ 47,000

86—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Fund 0264 FY 2002 Org 0313

1 West Virginia’s Contribution to the
2 Ohio River Valley Water
3 Sanitation Commission—Total . . . . 135 $ 134,300

87—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2002 Org 0313

1 Personal Services .................. 001 $ 4,550,160
2 Annual Increment ................... 004 68,503
3 Employee Benefits .................. 010 1,457,082
4 Unclassified ......................... 099 1,299,773
5 Dam Safety ........................ 607 179,207
6 Office of Water Resources
7 Non-Enforcement ................... 855 1,170,829
8 BRIM Premium ...................... 913 12,462
9 Total .............................. $ 8,738,016

10 Any unexpended balance remaining in the appropriation for
11 Office of Water Resources—Equipment—Surplus (fund 0273,
12 activity 875) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

88—Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2002 Org 0325

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<th>Code</th>
<th>Amount</th>
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<tr>
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BUREAU OF SENIOR SERVICES

89—Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2002 Org 0508

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<td>523,471</td>
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<tr>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>14,400</td>
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<tr>
<td>Area Agencies Administration</td>
<td>203</td>
<td>87,428</td>
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<tr>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
<td>50,000</td>
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<tr>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
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BUREAU OF EMPLOYMENT PROGRAMS

90—Bureau of Employment Programs

(WV Code Chapter 23)
Any unexpended balance remaining in the appropriation for Welfare-to-Work—Total (fund 0572, activity 416) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002, with the exception of 0572, fiscal year 2001, activity 416 ($30,000) which shall expire on June 30, 2001.

**HIGHER EDUCATION POLICY COMMISSION**

91—Higher Education Policy Commission—

*Administration—*

*Control Account*

(WV Code Chapters 18B)

Fund 0589 FY 2002 Org 0441

<table>
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<tr>
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<td>Joint Commission on Vocational - Technical - Occupational Education</td>
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<td>West Virginia Council for Community and Technical Education</td>
<td>392</td>
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<td>Tuition Contract Program</td>
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<tr>
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<td><strong>Total</strong></td>
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<td><strong>6,381,944</strong></td>
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</table>

92—Higher Education Policy Commission—

*System—*

*Control Account*

(WV Code Chapter 18B)
<table>
<thead>
<tr>
<th>#</th>
<th>Institution</th>
<th>Fund</th>
<th>Org</th>
<th>Appropriations</th>
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<tbody>
<tr>
<td>1</td>
<td>Bluefield State College</td>
<td>0586</td>
<td>0442</td>
<td>408 $2,013,001</td>
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<tr>
<td>2</td>
<td>Bluefield State Community and Technical</td>
<td></td>
<td></td>
<td></td>
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<td>3</td>
<td>Concord College</td>
<td>0586</td>
<td>0442</td>
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<td>4</td>
<td>Eastern West Virginia Community and Technical</td>
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<tr>
<td>5</td>
<td>Fairmont State College</td>
<td>0586</td>
<td>0442</td>
<td>412 $2,000,000</td>
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<td>6</td>
<td>Fairmont State Community and Technical</td>
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<td>7</td>
<td>Glenville State College</td>
<td>0586</td>
<td>0442</td>
<td>421 $6,829,430</td>
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<td>8</td>
<td>Glenville State Community and Technical</td>
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<td>9</td>
<td>Hocking College</td>
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<td>0442</td>
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<td>11</td>
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<td>12</td>
<td>Shepherd Community and Technical</td>
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<td>Southern West Virginia Community and Technical</td>
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<td>0586</td>
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<td>15</td>
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<td>0442</td>
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<td>16</td>
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<tr>
<td>18</td>
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<td>19</td>
<td>West Virginia Northern Community and Technical</td>
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<td>20</td>
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<td>0442</td>
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<td>21</td>
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<td>22</td>
<td>BRIM Subsidy</td>
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<td>23</td>
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<td>0442</td>
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<td>25</td>
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<td>26</td>
<td>West Virginia University Medical School</td>
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<td>0442</td>
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<td>Potomac State College</td>
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<td>29</td>
<td>West Virginia University - Parkersburg</td>
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<td>0442</td>
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<td>30</td>
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<td>31</td>
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<td>32</td>
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<tr>
<td>33</td>
<td>West Virginia University of Charleston Medical School</td>
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<td>34</td>
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<tr>
<td>35</td>
<td>West Virginia University Institute for Technology</td>
<td>479 ( \times ) ( 7,123,280 )</td>
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<tr>
<td>36</td>
<td>West Virginia University Institute for Technology Community and Technical College</td>
<td>486 ( \times ) ( 3,217,617 )</td>
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<td></td>
</tr>
<tr>
<td>37</td>
<td>Unclassified</td>
<td>099 ( \times ) 0</td>
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<td></td>
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<tr>
<td>38</td>
<td>Marshall University - Southern WV Community and Technical College 2+2 Program</td>
<td>170 ( \times ) 0</td>
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</tr>
<tr>
<td>39</td>
<td>Jackson’s Mill</td>
<td>461 ( \times ) 0</td>
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<td></td>
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<tr>
<td>40</td>
<td>Marshall University Autism Training Center</td>
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<td></td>
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<tr>
<td>41</td>
<td>Marshall and West Virginia University Faculty and Course Development International Study Project</td>
<td>549 ( \times ) 0</td>
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<td></td>
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<tr>
<td>42</td>
<td>Marshall University - Forensic Lab</td>
<td>572 ( \times ) 0</td>
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</tr>
<tr>
<td>43</td>
<td>WVU Law School Skills Program</td>
<td>745 ( \times ) 0</td>
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<tr>
<td>44</td>
<td>WVU Coal, Energy Resources Bureau</td>
<td>827 ( \times ) 0</td>
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<tr>
<td>45</td>
<td>WVU College of Engineering and Mineral Resources - Diesel Training - Transfer</td>
<td>852 ( \times ) 0</td>
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<td>46</td>
<td>Total</td>
<td>( \times ) $358,386,763</td>
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</tbody>
</table>

Included in the above appropriation for West Virginia University and Marshall University are $1,047,000 and $350,000, respectively, for Graduate Medical Education which may be transferred to the Department of Health and Human Resources’ Medical Service Fund (fund 5084) for the purpose of matching federal or other funds to be used in support of graduate medical education, subject to the approval of the Vice-Chancellor for Health Sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, the funds may be utilized by the respective institutions for expenditure.
Included in the above appropriation for West Virginia University is $250,000 for the WVU Law School-Skills Program (activity 745), $150,000 for the WVU Coal and Energy Research Bureau (activity 827), $20,000 for the WVU College of Engineering and Mineral Resources-Diesel Training-Transfer (activity 852), $35,000 for the Marshall and WVU Faculty and Course Development International Study Project (activity 549), $43,745,897 for the WVU School of Health Sciences (activity 178), $4,173,084 for the WVU School of Health Sciences - Charleston Division (activity 175), $1,109,584 for Rural Health Initiative Site Support Program (activity 853), $3,382,847 for Primary Health Education Program Support (activity 177), and $517,866 for the WVU Charleston Division Poison Control Hotline (activity 510).

Included in the above appropriation for Marshall University is $186,887 for the Marshall University-Southern West Virginia Community and Technical College 2+2 Program (activity 170), $614,018 for the Marshall University Autism Training Center (activity 548), $480,707 for the Marshall University Forensic Lab (activity 572), $12,137,291 for the Marshall Medical School (activity 173), $957,000 for Rural Health Initiative Site Support Program (activity 853), and $967,532 for Primary Health Education Program Support (activity 177).

Included in the above appropriation for the School of Osteopathic Medicine is $868,000 for Rural Health Initiative Site Support Program (activity 853), and $536,161 for Primary Health Education Program Support (activity 177).

Included in the above appropriation for Southern West Virginia Community and Technical College is $373,774 for the Marshall University-Southern West Virginia Community and Technical College 2+2 Program (activity 170).
The institutions operating from special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

93—Higher Education Policy Commission—

Health Sciences—

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2002 Org 0477

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>WVU—School of Health Sciences—</td>
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<tr>
<td>2</td>
<td>Charleston Division</td>
<td>175</td>
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<td>3</td>
<td>Primary Health Education</td>
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<td>4</td>
<td>Program Support</td>
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<td>5</td>
<td>Graduate Medical Education</td>
<td>197</td>
<td>$0</td>
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<tr>
<td>6</td>
<td>Marshall University -</td>
<td></td>
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</tr>
<tr>
<td>7</td>
<td>Center for Rural Health</td>
<td>198</td>
<td>$0</td>
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<td>8</td>
<td>Medical Education</td>
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<td>9</td>
<td>WVU Charleston Division - Poison Control</td>
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<td>10</td>
<td>Hot Line</td>
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<td>11</td>
<td>Rural Health Initiative Site</td>
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<td>12</td>
<td>Support Program</td>
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</tbody>
</table>

94—Higher Education Policy Commission—

Administration—

Funding Priorities

Control Account

(WV Code Chapter 18B)

Fund 0591 FY 2002 Org 0441
Peer Equity and Sustained Quality Support .......................... 489 $ 7,000,000

Independently Accredited Community and Technical College Development . . . 491 1,000,000

Total .................................. $ 8,000,000

The West Virginia Legislature reaffirms its commitment to the spirit, intent, and goals of the Compact with Higher Education as outlined in Senate Bill 653, as passed during the 2000 Regular Session. The Legislature recognizes the continued need to provide improved access to postsecondary education for all of West Virginia’s citizens in order to diversify and expand the economy of the State, and increase the competitiveness of the workforce.

The above appropriation shall be allocated only to the State’s post-secondary institutions with compacts approved by the Higher Education Policy Commission, as stated in §18B-1A-5.

95—Claims Against the General Revenue Fund

Claims Against the State ............... 319 $ 0

Total TITLE II, Section 1—

General Revenue ................. $ 2,799,904,183

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

DEPARTMENT OF TRANSPORTATION

96-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
### Fund 9007 FY 2002 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 International Fuel Tax Agreement</td>
<td>536</td>
</tr>
<tr>
<td>6 Total</td>
<td>560,644</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$35,008,616</strong></td>
</tr>
</tbody>
</table>

**97-Division of Highways**

(WV Code Chapters 17 and 17C)

### Fund 9017 FY 2002 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>040</td>
</tr>
<tr>
<td>2 Maintenance</td>
<td>237</td>
</tr>
<tr>
<td>3 Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
</tr>
<tr>
<td>4 Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>272</td>
</tr>
<tr>
<td>5 Bridge Repair and Replacement</td>
<td>273</td>
</tr>
<tr>
<td>6 Inventory Revolving</td>
<td>275</td>
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<tr>
<td>7 Equipment Revolving</td>
<td>276</td>
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<tr>
<td>8 General Operations</td>
<td>277</td>
</tr>
<tr>
<td>9 Interstate Construction</td>
<td>278</td>
</tr>
<tr>
<td>10 Other Federal Aid Programs</td>
<td>279</td>
</tr>
<tr>
<td>11 Appalachian Programs</td>
<td>280</td>
</tr>
<tr>
<td>12 Nonfederal Aid Construction</td>
<td>281</td>
</tr>
<tr>
<td>13 Highway Litter Control</td>
<td>282</td>
</tr>
<tr>
<td>14 Total</td>
<td><strong>$1,068,401,421</strong></td>
</tr>
</tbody>
</table>
The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

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

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

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

98—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2002 Org 0803
Any unexpended cash and investment balances remaining in fund 9018 at the end of fiscal year 2001 shall be transferred to fund 9399 at the direction of the secretary of transportation.

99—Claims Against the State Road Fund

Claims Against the State ...................... 319 $ 0
Total TITLE II, Section 2—
State Road Fund ...................... $1,103,513,928

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

LEGISLATIVE

100—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2002 Org 2300

<table>
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<tr>
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<th>Other Funds</th>
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<tr>
<td>004 Annual Increment</td>
<td>$4,500</td>
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<td>010 Employee Benefits</td>
<td>$59,580</td>
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<tr>
<td>099 Unclassified</td>
<td>$41,262</td>
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<tr>
<td>334 Economic Loss Claim</td>
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<td>Total</td>
<td>$1,855,342</td>
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</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334)
10 at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

EXECUTIVE

101—Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2002 Org 0100

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
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<td>$1,861,658</td>
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<tr>
<td>2</td>
<td>EPSCOR Undergraduate Scientific Instrumentation</td>
<td>829</td>
<td>150,000</td>
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<td>$2,011,658</td>
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102—Auditor’s Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2002 Org 1200

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<th></th>
<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$184,629</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>195,416</td>
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<tr>
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<td>Total</td>
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<td>$426,533</td>
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</table>

6 There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter eleven-a of the West Virginia Code.
12 The total amount of this appropriation shall be paid from
13 the special revenue fund out of fees and collections as provided
14 by law.

103—Auditor's Office—

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2002 Org 1200

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>197,693</td>
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<td>4</td>
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104—Auditor's Office—

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2002 Org 1200

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<tr>
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105—Auditor's Office—

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2002 Org 1200

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106—Auditor's Office—
Office of the Chief Inspector
(WV Code Chapter 6)

Fund 1235 FY 2002 Org 1200

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<td>Annual Increment</td>
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<td>Unclassified</td>
<td>099</td>
<td>430,261</td>
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<td>$2,359,994</td>
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107—Treasurer's Office—

Technology Support and Acquisition
(WV Code Chapter 12)

Fund 1329 FY 2002 Org 1300

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

108—Department of Agriculture—

Agriculture Fees Fund
(WV Code Chapter 19)

Fund 1401 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$811,568</td>
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<td>Annual Increment</td>
<td>004</td>
<td>7,268</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>212,731</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>598,094</td>
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<tr>
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<td>$1,629,661</td>
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</table>

109—Department of Agriculture—

West Virginia Rural Rehabilitation Program
(WV Code Chapter 19)

Fund 1408 FY 2002 Org 1400

1 Student and Farm Loans—Total ....... 235 $ 540,596

110—Department of Agriculture—

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2002 Org 1400

1 Personal Services .................. 001 $ 23,708
2 Employee Benefits .................. 010 16,425
3 Unclassified ...................... 099 40,000
4 Total ............................... $ 80,133

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

111—Department of Agriculture—

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2002 Org 1400

1 Unclassified—Total ................. 096 $ 1,027,019

112—Attorney General—

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2002 Org 1500
113—Attorney General—

Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2002 Org 1500

1 Unclassified—Total .................. 096 $ 224,826

114—Attorney General—

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2002 Org 1500

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

115—Secretary of State—

Trademark Registration

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2002 Org 1600

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

116—Secretary of State—

Service Fees and Collection Account
(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2002 Org 1600

1 Personal Services .................. 001 $ 995,000
2 Annual Increment .................. 004 7,530
3 Employee Benefits .................. 010 312,500
4 Unclassified ..................... 099 1,663,500
5 Total .................... $ 2,978,530

DEPARTMENT OF ADMINISTRATION

117—Office of the Secretary—

Natural Gas Contract Refund Fund

(WV Code Chapter 5A)

Fund 2040 FY 2002 Org 0201

1 Unclassified -Total .................. 096 $ 100,000

118—Office of the Secretary—

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2002 Org 0201

1 Tobacco Settlement Fund—Transfer ... 902 $ 38,000,000
2 From the above appropriation for Tobacco Settlement
3 Fund—Transfer, $38,000,000 shall be transferred to the
4 Division of Health (fund 5124, org 0506) for expenditure.

119—Division of Finance—

Public Employees Insurance Reserve Fund
APPROPRIATIONS

(WV Code Chapter 5A)

Fund 2207 FY 2002 Org 0209

1 Public Employees Insurance Reserve
2 Fund—Transfer ....................... 903 $ 5,000,000

3 The above appropriation for Public Employees Insurance Reserve Fund—Transfer shall be transferred to the Public Employees Insurance Agency (fund 2180, org 0225) for expenditure.

120—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2002 Org 0210

1 Personal Services ....................... 001 $ 6,040,626
2 Annual Increment ....................... 004 83,915
3 Employee Benefits ..................... 010 1,768,400
4 Unclassified ............................ 099 1,802,464
5 Total ................................. $ 9,695,405

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

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

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

121—Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2002 Org 0222

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$2,488,693</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>48,200</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>730,372</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>734,697</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$4,001,962</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for
Human Resource Information System (fund 2440, activity 641)
at the close of the fiscal year 2001 is hereby reappropriated for
expenditure during the fiscal year 2002.

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

122—WV Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 2521 FY 2002 Org 0228

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$633,817</td>
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</table>

DEPARTMENT OF EDUCATION

123—State Board of Education—

Strategic Staff Development
Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 3937, activity 096) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

124—State Department of Education—

School Building Authority

Fund 3959 FY 2002 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>$519,633</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$5,750</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$181,329</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$264,549</td>
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<tr>
<td>Total</td>
<td></td>
<td>$971,261</td>
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</tbody>
</table>

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

125—State Department of Education—

FFA-FHA Camp and Conference Center

Fund 3960 FY 2002 Org 0402
1 Personal Services .................. 001 $ 737,016
2 Annual Increment .................. 004 10,250
3 Employee Benefits .................. 010 230,308
4 Unclassified ...................... 099 1,043,520
5 Total .................. $ 2,021,094

DEPARTMENT OF EDUCATION AND THE ARTS

126—Office of the Secretary—

Lottery Education Fund Interest Earnings—

Control Account

(WV Code Chapter 29)

Fund 3508 FY 2002 Org 0431

1 Unclassified—Total .................. 096 $ 800,000

127-Division of Culture and History—

Public Records and Preservation Revenue Fund

(WV Code Chapters 18 and 18B)

Fund 3542 FY 2002 Org 0432

1 Unclassified—Total .................. 096 $ 22,364

128—State College and University systems—

State Systems Registration Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4033 FY 2002 Org 0453
Any unexpended balance remaining in the appropriations for Capital Outlay (fund 4033, activity 511) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002. The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

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

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), 1977 State System Registration Fee Refund Revenue Construction Fund (fund 4905).

129—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4041 FY 2002 Org 0453

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002. The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.
The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to section eight, article twelve-b, chapter eighteen of the code, which have since been refunded.

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Tuition Fee Revenue Bond Construction Fund (fund 4906).

130—State University System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4007 FY 2002 Org 0461

Any unexpended balances remaining in the appropriations for (except fiscal year 1999, activities 040, 251, 252, and 438) and (except fiscal year 1996, activity 458) are hereby reappropriated for expenditure during the fiscal year 2002.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.
Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Registration Fee Capital Improvement Fund (fund 4902).

131—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4008 FY 2002 Org 0461

Any unexpended balances remaining in the appropriations (except fiscal year 1999, activity 258 and fiscal year 1999, activity 438) are hereby reappropriated for expenditure during the fiscal year 2002.

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

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

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Tuition Fee Capital Improvement Fund (fund 4903).

132—State College System—
Any unexpended balances remaining in the appropriations (except fiscal year 1999, activity 040) are hereby reappropriated for expenditure during the fiscal year 2002.

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

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

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Registration Fee Capital Improvement Fund (fund 4902).

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)
Any unexpended balances remaining in the appropriations (except fiscal year 1999, activity 040) are hereby reappropriated for expenditure during the fiscal year 2002.

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

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

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization 0442), Tuition Fee Capital Improvement Fund (fund 4903).

134—State University System—

Revenue Bond Construction Fund

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

Any balances so reappropriated are redesignated into the Higher Education Policy Commission - System (organization
6 0442), State University System Revenue Bond Construction Fund (fund 4907).

135—State Board of Rehabilitation—

Division of Rehabilitation Services—

West Virginia Rehabilitation Center—

Special Account

(WV Code Chapter 18)

Fund 8664 FY 2002 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Unclassified</td>
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<tr>
<td>Workshop Development</td>
<td>163</td>
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<tr>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>50,000</td>
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<td><strong>Total</strong></td>
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</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

136—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2002 Org 0505

<table>
<thead>
<tr>
<th>Item</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$228,412</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,861</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>78,181</td>
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<td>Unclassified</td>
<td>099</td>
<td>124,738</td>
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<td><strong>Total</strong></td>
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<td><strong>$436,192</strong></td>
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</table>

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

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2002 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Institutional Facilities Operations (R)</td>
<td>335</td>
<td>$32,149,408</td>
</tr>
<tr>
<td>2</td>
<td>ABCA Tobacco Retailer Education Program—Transfer</td>
<td>239</td>
<td>200,000</td>
</tr>
<tr>
<td>3</td>
<td>Tobacco Education Program (R)</td>
<td>906</td>
<td>5,650,592</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$38,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335) and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

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

The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period.
Additional funds have been appropriated in fund 0525, fiscal year 2002, organization 0506, and fund 5156, fiscal year 2002, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335) and consolidated medical services fund (fund 0525, activity 335), on July 1, 2001, the sum of one hundred fifty-thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

138—Division of Health—

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2002 Org 0506

<table>
<thead>
<tr>
<th>Service</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<tr>
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<td>004</td>
<td>8,203</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>112,625</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>99,950</td>
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<tr>
<td>Total</td>
<td></td>
<td>$475,547</td>
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</table>

139—Division of Health—

Hospital Services Revenue Account

(Special Fund)
Any unexpended balances remaining in the appropriations for hospital services revenue account at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002, except for fund 5156, activity 040, and activity 512 (fiscal year 2000) which shall expire on June 30, 2001.

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

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

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2002, organization 0506) and the tobacco settlement expenditure fund (fund 5124, fiscal year 2002, organization 0506).
From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) and the tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2001, the sum of one hundred fifty-thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

140—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2002 Org 0506

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$ 9,450</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>099</td>
<td>$367,476</td>
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<tr>
<td>Total</td>
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</tbody>
</table>

141—Division of Health—

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2002 Org 0506

<table>
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<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$ 2,800</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$ 78,645</td>
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<td>$ 89,585</td>
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<td></td>
<td>$ 369,244</td>
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</table>
**142—Division of Health—**

*Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2002 Org 0506

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$ 1,150</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>$ 3,074,846</td>
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**143—Division of Health—**

*Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2002 Org 0506

<table>
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<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
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<tbody>
<tr>
<td>1</td>
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<td>$ 65,924</td>
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**144—WV Board of Medicine**

(WV Code Chapter 30)

Fund 5106 FY 2002 Org 0506

<table>
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<th>Account</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$ 1,059,248</td>
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</table>

**145—West Virginia Health Care Authority**

(WV Code Chapter 16)

Fund 5375 FY 2002 Org 0507

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 1,772,454</td>
</tr>
</tbody>
</table>
2 Annual Increment .......................... 004 14,450
3 Employee Benefits .......................... 010 517,841
4 Unclassified ................................. 099 2,396,405
5 Total .......................... $ 4,701,150

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

146—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2002 Org 0511

1 Unclassified—Total .......................... 096 $ 148,600,000

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

147—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2002 Org 0511

1 Unclassified—Total (R) .......................... 096 $ 28,324,780
Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 5094, activity 096) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during fiscal year 2002, except for fund 5094, activity 096 (fiscal year 2000) which shall expire on June 30, 2001.

148—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2002 Org 0511

1 Eligibility Expansion .................. 582 $ 5,478,398
2 State Institutions DPSH Payments ..... 583 6,566,355
3 Hospice Services ....................... 584 342,975
4 Match Drop .......................... 585 10,472,000
5 Payment to Non-State Hospitals DPSH . 492 14,557,600
6 Total ................................. $37,417,328

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

149—Division of Human Services—

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2002 Org 0511

1 Unclassified—Total .................... 096 $ 1,250,663
CH. 1] APPROPRIATIONS 2959

150—Family Protection Services Board—
Domestic Violence Legal Services Fund
(WV Code Chapter 48)
Fund 5455 FY 2002 Org 0511

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

151—Department of Military Affairs and Public Safety—
Office of the Secretary—
Law-Enforcement, Safety and
Emergency Worker Funeral
Expense Payment Fund
(WV Code Chapter 15)
Fund 6003 FY 2002 Org 0601

1 Unclassified—Total ................ 096 $ 16,000

152—State Armory Board—
General Armory Fund
(WV Code Chapter 15)
Fund 6057 FY 2002 Org 0603

1 Unclassified—Total ................ 096 $ 458,250
### Appropriations

**153—West Virginia Division of Corrections—**

*Parolee Supervision Fees*

*(WV Code Chapter 62)*

**Fund 6362 FY 2002 Org 0608**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$113,807</td>
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<tr>
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<td>004</td>
<td>$1,466</td>
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<td>Employee Benefits</td>
<td>010</td>
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</table>

**154—West Virginia Division of Corrections—**

*WV Community Corrections Fund*

*(WV Code Chapter 62)*

**Fund 6386 FY 2002 Org 0608**

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<tr>
<th>Item</th>
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**155—West Virginia State Police—**

*Motor Vehicle Inspection Fund*

*(WV Code Chapter 17C)*

**Fund 6501 FY 2002 Org 0612**

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<td><strong>$2,003,047</strong></td>
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</table>
The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

156—West Virginia State Police—

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2002 Org 0612

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

157—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2002 Org 0612

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158—West Virginia State Police—
### Surplus Transfer Account

(WV Code Chapter 15)

**Fund 6519 FY 2002 Org 0612**

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<td><strong>Total</strong></td>
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Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 6519, activity 096) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

### 159—West Virginia State Police—

**Central Abuse Registry Fund**

(WV Code Chapter 15)

**Fund 6527 FY 2002 Org 0612**

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### 160—West Virginia State Police—

**Bail Bond Enforcer Fund**

(WV Code Chapter 15)

**Fund 6532 FY 2002 Org 0612**

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</table>
### 161—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2002 Org 0615

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<td>1</td>
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<td>010</td>
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<td>Debt Service</td>
<td>040</td>
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<td>5</td>
<td>Unclassified</td>
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### 162—Division of Veterans’ Affairs—

**Veterans’ Home**

(WV Code Chapter 19A)

Fund 6754 FY 2002 Org 0618

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### 163—Fire Commission—

**Fire Marshal Fees**

(WV Code Chapter 29)

Fund 6152 FY 2002 Org 0619

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<td>Employee Benefits</td>
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<td>4</td>
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<td>413,707</td>
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<tr>
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Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2001 is hereby available for expenditure as part of the fiscal year 2002 appropriation.

164—Criminal Justice Services—

Court Security Fund

(Executive Order)

Fund 6804 FY 2002 Org 0620

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DEPARTMENT OF TAX AND REVENUE

165—Division of Banking—

Lending and Credit Rate Board

(WV Code Chapter 47A)

Fund 3040 FY 2002 Org 0303

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166—Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2002 Org 0303

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## 167—Tax Division—

### Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2002 Org 0702

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<th>Code</th>
<th>Amount</th>
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<tr>
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## 168—Tax Division—

### Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2002 Org 0702

<table>
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<th>Description</th>
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<th>Amount</th>
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<tr>
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## 169—Insurance Commissioner—

### Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2002 Org 0704

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<th>Code</th>
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<td>Employee Benefits</td>
<td>010</td>
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<td>$241,000</td>
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<tr>
<td>Total</td>
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</table>
170—Insurance Commissioner—

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2002 Org 0704

1 Personal Services .................. 001 $201,616
2 Annual Increment .................. 004 1,250
3 Employee Benefits ................. 010 63,971
4 Unclassified ...................... 099 115,908
5 Total ............................. $382,745

171—Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2002 Org 0704

1 Personal Services .................. 001 $2,238,919
2 Annual Increment .................. 004 33,950
3 Employee Benefits ................. 010 641,816
4 Unclassified ...................... 099 1,458,722
5 Total ............................. $4,373,407

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

172—Racing Commission—

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2002 Org 0707

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

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

173—Racing Commission—

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2002 Org 0707

1 Personal Services ...................... 001 $ 54,836
2 Annual Increment ...................... 004 1,000
3 Employee Benefits .................... 010 23,876
4 Unclassified .......................... 099 47,358
5 Total .................................... $ 127,070

174—Racing Commission—

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2002 Org 0707

1 Personal Services ...................... 001 $ 1,579,617
2 Annual Increment ...................... 004 20,250
3 Employee Benefits .................... 010 390,462
4 Unclassified .......................... 099 232,448
5 Total .................................... $ 2,222,777

175—Racing Commission—
Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2002 Org 0707

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176—Alcohol Beverage Control Administration—

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2002 Org 0708

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177—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2002 Org 0708

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<td>Total</td>
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</table>

Any unexpended balance remaining in Unclassified (fund 7352, activity 099) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.
From the above appropriation an amount of $500,000 shall be used for the Tobacco/Alcohol Education Program. To the extent permitted by law, eight classified exempt positions shall be provided from Personal Services line item for the educator-inspector positions to be used in the education and enforcement activities relating to underage tobacco and alcohol use and sales.

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

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

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

**DEPARTMENT OF TRANSPORTATION**

*178—Division of Motor Vehicles—*

*Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 2002 Org 0802

<p>| | | | | |</p>
<table>
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<th></th>
<th></th>
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*179—Division of Motor Vehicles—*
### Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2002 Org 0802

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### 180—Division of Motor Vehicles—

Insurance Certificate Fees

(WV Code Chapter 20)

Fund 8215 FY 2002 Org 0802

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### 181—Division of Motor Vehicles—

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2002 Org 0802

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<tbody>
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### 182—Division of Motor Vehicles—

Returned Check Fees

(WV Code Chapter 17)
183—Division of Motor Vehicles—

Dealer Recovery Fund

(WV Code Chapter 17)

184—Division of Highways—

Tire Remediation/Environmental Clean-Up Fund

(WV Code Chapter 17)

185—Division of Highways—

A. James Manchin Fund

(WV Code Chapter 17)

186—Division of Forestry

(WV Code Chapter 19)
### Fund 3081 FY 2002 Org 0305

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187—Division of Forestry—

**Timberland Enforcement Operations**

(WV Code Chapter 19)

### Fund 3082 FY 2002 Org 0305

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188—Division of Forestry—

**Severance Tax Operations**

(WV Code Chapter 11)

### Fund 3084 FY 2002 Org 0305

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189—Geological and Economic Survey

(WV Code Chapter 29)

### Fund 3100 FY 2002 Org 0306

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</table>
The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

190—West Virginia Development Office—

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2002 Org 0307

Any unexpended balance remaining in the appropriation for Energy Assistance—Total (fund 3144, activity 647) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

191—West Virginia Development Office—

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2002 Org 0307

Unclassified—Total (R) .................. 096 $ 300,000

Any unexpended balance remaining in the above appropriation for Unclassified - Total (fund 3162, activity 096) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

192—Division of Labor—

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2002 Org 0308
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<th>Item</th>
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<th>Amount</th>
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193—Division of Labor—

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2002 Org 0308

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<th>Item</th>
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<th>Amount</th>
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<tr>
<td>1</td>
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194—Division of Labor—

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2002 Org 0308

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<tbody>
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<td>$60,697</td>
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195—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2002 Org 0308

<table>
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<th>Item</th>
<th>Category</th>
<th>Code</th>
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<td>1</td>
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</table>
196—Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2002 Org 0310

1 Personal Services .................. 001 $ 7,527,825
2 Annual Increment .................. 004 145,462
3 Employee Benefits ................. 010 2,748,387
4 Unclassified ..................... 099 2,242,593
5 Capital Improvements and
6 Land Purchase (R) ............... 248 1,395,225
7 Total ............................ $ 14,059,492

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

Any unexpended balance remaining in the appropriation for
Capital Improvements and Land Purchase (fund 3200, activity
248) at the close of the fiscal year 2001 is hereby
reappropriated for expenditure during the fiscal year 2002.

197—Division of Natural Resources—

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2002 Org 0310

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

198—Division of Natural Resources—

Nongame Fund

(WV Code Chapter 20)
Fund 3203 FY 2002 Org 0310

1 Personal Services .......................... 001 $ 204,957
2 Annual Increment .......................... 004 5,000
3 Employee Benefits ......................... 010 50,328
4 Unclassified ............................... 099 17,282
5 Total ....................................... $ 277,567

199—Division of Natural Resources—

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2002 Org 0310

1 Personal Services .......................... 001 $ 245,683
2 Annual Increment .......................... 004 5,450
3 Employee Benefits ......................... 010 83,571
4 Unclassified ............................... 099 139,443
5 Total ....................................... $ 474,147

200—Division of Natural Resources—

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2002 Org 0310

1 Unclassified—Total ........................ 096 $ 175,925

201—Division of Natural Resources—

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2002 Org 0310
1 Personal Services .................. 001 $ 167,375
2 Annual Increment .................. 004 2,700
3 Employee Benefits ................. 010 63,793
4 Unclassified (R) ................... 099 1,416,206
5 Total ............................. $ 1,650,074

Any unexpended balance remaining in the appropriation for
Unclassified (fund 3254, activity 099) at the close of the fiscal
year 2001 is hereby reappropriated for expenditure during the
fiscal year 2002 with the exception of fund 3254, activity 099
(fiscal year 1997, fiscal year 1998 and fiscal year 1999) which

202-Division of Natural Resources—

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2002 Org 0310

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

BUREAU OF EMPLOYMENT PROGRAMS

203—Bureau of Employment Programs—

Workers’ Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2002 Org 0322

1 Personal Services .................. 001 $ 23,414,195
2 Annual Increment .................. 004 379,553
3 Employee Benefits ................. 010 8,200,599
4 Unclassified (R) ................... 099 31,184,316
5 Employer Excess Liability Fund ...... 226 116,256
6 Total ............................. $ 63,294,919
Any unexpended balance remaining in the appropriation for Unclassified (fund 3440, activity 099) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

204—Solid Waste Management Board

(WV Code Chapter 20)

Fund 3288 FY 2002 Org 0312

<table>
<thead>
<tr>
<th>Item</th>
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<th>Description</th>
<th>FY 2002</th>
<th>Amount</th>
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<td>1</td>
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<td>Employee Benefits</td>
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<td>4</td>
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205—Division of Environmental Protection—

Special Reclamation Fund

(WV Code Chapter 22A)

Fund 3321 FY 2002 Org 0313

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<thead>
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<th>Description</th>
<th>FY 2002</th>
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<tr>
<td>1</td>
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206—Division of Environmental Protection—

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)
**207—Division of Environmental Protection—**

*Oil and Gas Operating Permits*

(WV Code Chapter 22B)

<table>
<thead>
<tr>
<th>Fund 3322 FY 2002 Org 0313</th>
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<tbody>
<tr>
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**208—Division of Environmental Protection—**

*Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

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<th>Fund 3324 FY 2002 Org 0313</th>
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<tr>
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**209—Division of Environmental Protection—**

*Underground Storage Tanks—*

*Administrative Fund*

(WV Code Chapter 20)
### Fund 3325 FY 2002 Org 0313

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<tr>
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<tr>
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#### 210—Division of Environmental Protection—

**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

### Fund 3331 FY 2002 Org 0313

<table>
<thead>
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<th>Code</th>
<th>Amount</th>
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<tbody>
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#### 211—Division of Environmental Protection—

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

### Fund 3332 FY 2002 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
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</table>
### Ch. 1] APPROPRIATIONS

#### 212—Division of Environmental Protection—

_Solid Waste Enforcement Fund_

(WV Code Chapter 20)

Fund 3333 FY 2002 Org 0313

<table>
<thead>
<tr>
<th>1</th>
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#### 213—Division of Environmental Protection—

_Fees and Operating Expenses_

(WV Code Chapter 16)

Fund 3336 FY 2002 Org 0313

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#### 214—Division of Environmental Protection—

_Environmental Laboratory_

_Certification Fund_

(WV Code Chapter 22)

Fund 3340 FY 2002 Org 0313

| 1   | Personal Services  | 001 | $118,051    |
### Appropriations

<table>
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<tr>
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215—Division on Environmental Protection—

*Stream Restoration Fund*

Fund 3349 FY 2002 Org 0313

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<th>Amount</th>
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<tbody>
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216—Division of Environmental Protection—

*Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2002 Org 0313

<table>
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<th></th>
<th>Code</th>
<th>Amount</th>
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217—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Fund 3371 FY 2002 Org 0315

<table>
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**Higher Education Policy Commission**

218—Health Sciences—
### West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

**Fund 4179 FY 2002 Org 0463**

<table>
<thead>
<tr>
<th>Description</th>
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<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Unclassified - Total (R)</td>
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</table>

Any unexpended balance remaining in the appropriations for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 2002.

### 219—Higher Education Policy Commission—

**System—**

**Registration Fee Capital Improvement Fund**

*(Capital Improvement and Bond Retirement Fund)*

**Control Account**

(WV Code Chapters 18 and 18B)

**Fund 4902 FY 2002 Org 0442**

<table>
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<th>Code</th>
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<tr>
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<tr>
<td>General Capital Expenditures</td>
<td>306</td>
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</table>

### 220—Higher Education Policy Commission—

**System—**

**Tuition Fee Capital Improvement Fund**

*(Capital Improvement and Bond Retirement Fund)*
Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2002 Org 0442

1 Debt Service .......................... 040 $ 14,986,909
2 General Capital Expenditures ........ 306 13,635,567
3 Facilities Planning and Administration . 386 382,737
4 Total .................................. $ 29,005,213

221—Higher Education Policy Commission—

Marshall University Land Sale Account

(WV Code Chapters 18B)

Fund 4270 FY 2002 Org 0471

1 Land Sale - Total ...................... 493 $ 600,000

MISCELLANEOUS BOARDS AND COMMISSIONS

222—Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2002 Org 0509

1 Personal Services ..................... 001 $ 40,270
2 Annual Increment ...................... 004 600
3 Employee Benefits ................... 010 14,749
4 Unclassified. ......................... 099 94,603
5 Total .................................. $ 150,222

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

APPROPRIATIONS 2985

223—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2002 Org 0706

<table>
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<th>Description</th>
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<td>Annual Increment</td>
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<td>2,700</td>
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224—WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2002 Org 0906

<table>
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<th>Description</th>
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<tr>
<td>1</td>
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225—WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2002 Org 0907

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226—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2002 Org 0926

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<td>1</td>
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<td>Unclassified</td>
<td>099</td>
<td>2,539,737</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>49,930</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$12,737,680</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $250,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

227—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8624 FY 2002 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td></td>
<td>$144,022</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td></td>
<td>5,556</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>57,150</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td></td>
<td>80,078</td>
</tr>
<tr>
<td>099</td>
<td>Total</td>
<td></td>
<td>286,806</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

228—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2002 Org 0926
1 Personal Services ................. 001  $ 1,550,755
2 Annual Increment .................. 004  34,723
3 Employee Benefits .................. 010  507,217
4 Unclassified ...................... 099  615,301
5 Total .............................. $ 2,707,996

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

229—Public Service Commission—

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2002 Org 0926

1 Personal Services .................. 001  $ 449,949
2 Annual Increment .................. 004  4,800
3 Employee Benefits .................. 010  125,630
4 Unclassified ...................... 099  290,860
5 BRIM Premium ..................... 913  1,889
6 Total .............................. $ 873,128

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

230—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2002 Org 0927

1 Personal Services .................. 001  $ 336,032
2 Annual Increment .................. 004  4,900
The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

### 231—WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2002 Org 0930

| Unclassified—Total | 096 | 54,003 |

### 232—WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2002 Org 0935

| Unclassified—Total | 096 | 114,163 |

### 233—WV Board of Licensed Dietitians

Fund 8680 FY 2002 Org 0936

| Unclassified—Total | 096 | 20,000 |

### 234—Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2002 Org 0938

| Unclassified—Total | 096 | 41,553 |

### 235—Claims Against Other Funds
Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery, not to exceed one hundred eighty-six million nine hundred ninety-two thousand four hundred seventy dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The lottery director shall prorate each deposit of net profits among fund numbers 2252, 3067, 3267, 3951, 3963, 3508, 3534, 3587, 3559, 4925 and 5405 in the proportion the appropriation for each account bears to the total of the appropriations for the eleven accounts.

236-Education, Arts, Sciences and Tourism—

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2002 Org 0211

<table>
<thead>
<tr>
<th>Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total 310 $10,000,000</td>
</tr>
</tbody>
</table>

237-West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2002 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Telemarketing Center 463 $100,000</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Activity Code</th>
<th>Requested Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Tourism—Advertising (R)</td>
<td>618</td>
<td>5,000,000</td>
</tr>
<tr>
<td>3 State Parks and Recreation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Advertising (R)</td>
<td>619</td>
<td>760,000</td>
</tr>
<tr>
<td>5 Tourism—Unclassified (R)</td>
<td>662</td>
<td>3,669,811</td>
</tr>
<tr>
<td>6 Tourism-Special Projects</td>
<td>859</td>
<td>3,250,000</td>
</tr>
<tr>
<td>7 Total</td>
<td></td>
<td>$12,779,811</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism—Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism—Unclassified (fund 3067, activity 662) and Tourism—Unclassified—Lottery Surplus (fund 3067, activity 773) are hereby reappropriated for expenditure during the fiscal year 2002.

#### 238—Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2002 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Activity Code</th>
<th>Requested Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified (R)</td>
<td>099</td>
<td>$1,533,132</td>
</tr>
<tr>
<td>2 State Recreation Area Improvements</td>
<td>307</td>
<td>2,000,000</td>
</tr>
<tr>
<td>3 Pricketts Fort State Park</td>
<td>324</td>
<td>120,000</td>
</tr>
<tr>
<td>4 Non-Game Wildlife</td>
<td>527</td>
<td>550,000</td>
</tr>
<tr>
<td>5 West Virginia Stream Partners Fund</td>
<td>637</td>
<td>100,000</td>
</tr>
<tr>
<td>6 Canaan Valley—Land Acquisition</td>
<td>710</td>
<td>200,000</td>
</tr>
<tr>
<td>7 State Parks - Special Projects (R)</td>
<td>860</td>
<td>1,000,000</td>
</tr>
<tr>
<td>8 Computerized Lodging Reservation</td>
<td>910</td>
<td>0</td>
</tr>
<tr>
<td>9 State Parks Repairs, Renovations, Maintenance and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Life Safety Repairs (R)</td>
<td>911</td>
<td>1,000,000</td>
</tr>
<tr>
<td>11 Total</td>
<td></td>
<td>$6,503,132</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Parks Operations—Unclassified (fund 3267, activity 645),
16 Capital Outlay—Parks (fund 3267, activity 288), State Parks—Special Projects (fund 3267, activity 860), State Parks Repairs, Renovations, Maintenance and Life Safety Repairs (fund 3267, activity 911), Computerized Lodging Reservation System (fund 3267, activity 910) and Unclassified (fund 3267, activity 099) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

239—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2002 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Safe Schools</td>
<td>143</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Computer Basic Skills (R)</td>
<td>145</td>
<td>$7,515,570</td>
</tr>
<tr>
<td>3</td>
<td>S.U.C.C.E.S.S (R)</td>
<td>255</td>
<td>$8,804,855</td>
</tr>
<tr>
<td>4</td>
<td>Technology Repair and Modernization (R)</td>
<td>298</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Three Tier Funding</td>
<td>411</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Technology and Telecommunications Initiative(R)</td>
<td>596</td>
<td>$2,009,213</td>
</tr>
<tr>
<td>7</td>
<td>Technology Demonstration Project (R)</td>
<td>639</td>
<td>$150,000</td>
</tr>
<tr>
<td>8</td>
<td>Educational Enhancements</td>
<td>695</td>
<td>$2,427,000</td>
</tr>
<tr>
<td>9</td>
<td>Educational Development (R)</td>
<td>823</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>10</td>
<td>Vocational Education Equipment Replacement</td>
<td>393</td>
<td>$1,019,750</td>
</tr>
<tr>
<td>11</td>
<td>READS Program</td>
<td>365</td>
<td>$300,000</td>
</tr>
<tr>
<td>12</td>
<td>MATH Program</td>
<td>368</td>
<td>$300,000</td>
</tr>
<tr>
<td>13</td>
<td>Employment Programs Rate Relief</td>
<td>401</td>
<td>$1,288,809</td>
</tr>
<tr>
<td>14</td>
<td>Bridges Program</td>
<td>394</td>
<td>$300,000</td>
</tr>
<tr>
<td>15</td>
<td>Assessment Program</td>
<td>396</td>
<td>$3,621,870</td>
</tr>
<tr>
<td>16</td>
<td>Teachers' Retirement System</td>
<td>019</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td></td>
<td>$34,737,067</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Computer Basic Skills (fund 3951, activity 145),
S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair and Modernization (fund 3951, activity 298), Computer Basic Skills—Total (fund 3951, activity 567), Technology and Telecommunications Initiative (fund 3951, activity 596), Technology Demonstration Project (fund 3951, activity 639) and Educational Development (fund 3951, activity 823) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

240—State Department of Education—

School Building Authority—

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2002 Org 0402

1 Debt Service—Total ................. 310 $18,000,000

241—Department of Education and the Arts—

Office of the Secretary—

Control Account—

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2002 Org 0431

1 Unclassified (R) ...................... 099 $ 2,600,000
2 WVU University Affiliated Center
3 for Developmental Disabilities (R) . 157 100,000
4 WV Humanities Council (R) ........... 168 350,000
5 Commission for National
6 Community Service (R) .............. 193 160,050
7  Incentives for Recruitment of Teachers  in Subject Areas of Need (R) . . . . . . 241  0
8  Technical Preparation Program (R) .... 440  904,425
9  Arts Programs (R) ......................... 500  40,000
10 WV2001 Project (R) .................. 836  1,500,000
11 Energy Express (R) ..................... 861  500,000
12 Challenger Learning Center (R) ........ 862  60,000
13 Jobs for West Virginia Graduates (R) . 863  750,000
14 Total ..................................... $ 6,964,475

16 Any unexpended balances remaining in the appropriations
17 at the close of fiscal year 2001 are hereby reappropriated for
18 expenditure during the fiscal year 2002.

242—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2002 Org 0432

1 Huntington Symphony ...................... 027 $ 75,000
2 Martin Luther King, Jr. Holiday
3 Celebration .................................. 031 14,550
4 Fairs and Festivals .......................... 122 1,900,000
5 Archeological Curation/Capital
6 Improvements (R) .......................... 246 1,000,000
7 Veteran’s Memorial - Washington DC . 268 216,543
8 Historic Preservation Grants ............... 311 500,000
9 West Virginia Public Theater .............. 312 300,000
10 Tyler County Heritage and
11 Historical Society .......................... 321 0
12 Theater Arts of West Virginia ............. 464 420,000
13 Capital Outlay, Repairs,
14 and Equipment(R) ........................ 589 1,500,000
APPROPRIATIONS

15 Grants for Competitive Arts Program . . 624 1,000,000
16 Contemporary American Theater Festival 811 110,000
17 Independence Hall (R) ................. 812 50,000
18 Mountain State Forest Festival ...... 864 75,000
19 George Tyler Moore Center for the Study of the Civil War .......... 397 70,000
21 Project ACCESS (R) .................. 865 300,000
22 Total .................................. $ 7,531,093

Any unexpended balances remaining in the appropriations for Project ACCESS (fund 3534, activity 865), Archeological Curation/Capital Improvements (fund 3534, activity 246), Independence Hall (fund 3534, activity 812), and Capital Outlay, Repairs and Equipment (fund 3534, activity 589) at the close of the fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002.

243—Library Commission—

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2002 Org 0433

1 Grants to Public Libraries ............. 182 $ 7,198,884
2 Books and Films ..................... 179 150,000
3 Services to State Institutions .......... 180 150,000
4 Libraries - Special Projects .......... 625 1,250,000
5 Infomine Network ..................... 884 1,003,536
6 Total .................................. $ 9,752,420

244—Educational Broadcasting Authority—

Lottery Education Fund
### Fund 3587 FY 2002 Org 0439

<table>
<thead>
<tr>
<th>Digital Conversion (R)</th>
<th>247</th>
<th>$2,400,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain Stage</td>
<td>249</td>
<td>$200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,600,000</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at the close of the fiscal year 2001 is hereby reappropriated for expenditure during the fiscal year 2002.

#### Department of Education and the Arts—

**Board of Trustees of the University System of West Virginia and Board of Directors of the State College Systems—**

**Central Office—**

**Control Account—**

**Lottery Education Fund**

(WV Code Chapters 18B and 18C)

| Any unexpended balances remaining in the appropriations at the close of fiscal year 2001 are hereby reappropriated for expenditure during the fiscal year 2002. |

Any balances so reappropriated are redesignated into the Higher Education Policy Commission Administration (organization 0441), Lottery Education - Higher Education Policy Commission (fund 4925).

#### Bureau of Senior Services
Local Programs Service Delivery Costs 200 $2,475,250
2 In-Home Services for Senior Citizens 224 700,000
3 Nutrition Services for the Elderly 337 700,000
4 Senior Citizen Centers and Programs (R) 462 6,000,000
5 Direct Services 481 2,800,000
6 Transfer to Division of Human Services for
7 Health Care and Title XIX Waiver for
8 Senior Citizens 539 13,000,000
9 Senior Services Medicaid Transfer 871 10,300,000
10 Legislative Initiatives for the Elderly 904 2,200,000
11 Long Term Care Ombudsmen 905 96,000
12 Total $38,271,250

Any unexpended balances remaining in the appropriations
for Senior Citizens Centers and Programs—Lottery Surplus
(fund 5405, activity 782), Holly Grove Mansion Restoration
(fund 5405, activity 685), Senior Citizens Centers, Maintenance
and Repairs (fund 5405, activity 848) and Senior Citizen
Centers and Programs (fund 5405, activity 462) at the close of
the fiscal year 2001 are hereby reappropriated for expenditure
during the fiscal year 2002.

The above appropriation for Health Care and Title XIX
Waiver for Senior Citizens along with the federal monies
generated thereby shall be used for reimbursement for services
provided under the program. Further, the program shall be
preserved within the aggregate of these funds.

247—Higher Education Policy Commission—

Lottery Education—
### APPROPRIATIONS

*Higher Education Policy Commission—*

*Control Account*

(WV Code Chapters 18B and 18C)

**Fund 4925 FY 2002 Org 0441**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$3,562,353</td>
</tr>
<tr>
<td>Higher Education Grant Program</td>
<td>164</td>
<td>18,000,000</td>
</tr>
<tr>
<td>Tuition Contract Program</td>
<td>165</td>
<td>749,561</td>
</tr>
<tr>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
<td>150,000</td>
</tr>
<tr>
<td>Underwood - Smith Scholarship Program</td>
<td>167</td>
<td>150,000</td>
</tr>
<tr>
<td>Health Sciences Scholarship</td>
<td>176</td>
<td>148,500</td>
</tr>
<tr>
<td>Medical Education</td>
<td>289</td>
<td>0</td>
</tr>
<tr>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>8,349,236</td>
</tr>
<tr>
<td>School of Osteopathic Medicine BRIM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subsidy</td>
<td>403</td>
<td>60,277</td>
</tr>
<tr>
<td>Promise Scholarships</td>
<td>330</td>
<td>0</td>
</tr>
<tr>
<td>MA Public Health Program and Health Science Technology</td>
<td>623</td>
<td>75,443</td>
</tr>
<tr>
<td>HEAPS Grant Program</td>
<td>867</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Incentives for Institutional Contributions to State Priorities</td>
<td>404</td>
<td>1,000,000</td>
</tr>
<tr>
<td>WV Engineering, Science, and Technology Scholarship Program</td>
<td>868</td>
<td>500,000</td>
</tr>
<tr>
<td>Health Sciences Career Opportunities Program</td>
<td>869</td>
<td>75,580</td>
</tr>
<tr>
<td>Higher Education-Special Projects</td>
<td>488</td>
<td>4,000,000</td>
</tr>
<tr>
<td>HSTA Program</td>
<td>870</td>
<td>754,379</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$39,575,329</td>
</tr>
</tbody>
</table>

25 Included in the above appropriation for the Incentives for Institutional Contributions to State Priorities is $200,000 for increased access to students with disabilities. The remaining
2998 APPROPRIATIONS [Ch. 1

28 appropriation shall be distributed for literacy and graduate initiatives.

1 Total TITLE II, Section 4—
2 Lottery Revenue ................ $ 186,714,577

Sec. 5. Appropriations from state excess lottery revenue fund.— In accordance with section eighteen-a, article twenty two, chapter twenty nine of the code, the following appropriations shall be deposited and disbursed by the lottery director to the following accounts in this section in the amounts indicated. After first satisfying the funding requirements of the general revenue transfer and the transfer to the education improvement fund, the lottery director shall allocate the remaining revenue to the remaining accounts on a pro rata basis.

248—Lottery Commission-

Fund 7205 FY 2002 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total-Transfer</td>
<td>402 $49,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified-Total-Transfer(activity 402) shall be transferred to the General Revenue Fund as provided by Chapter 29, Article 22, Section 18a of the Code.

249—Education Improvement Fund-

Fund 4295 FY 2002 Org 0441

1 Unclassified—Total-Transfer ........ 402 $ 5,500,000
The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by Chapter 18C, Article 7, Section 7.

### 250—School Building Authority—

**Fund 3514 FY 2002 Org 0402**

<table>
<thead>
<tr>
<th>Unclassified—Total-Transfer</th>
<th>402</th>
<th>$25,000,000</th>
</tr>
</thead>
</table>

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the School Building Debt Service Fund (fund 3515, org 0402) established by Chapter 18, Article 9d, Section 6.

### 251—West Virginia Infrastructure Council—

**Fund 3390 FY 2002 Org 0316**

<table>
<thead>
<tr>
<th>Unclassified—Total-Transfer</th>
<th>402</th>
<th>$25,000,000</th>
</tr>
</thead>
</table>

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3385, org 0316) created by Chapter 31, Article 15A, Section 9 of the Code.

### 252—Higher Education Improvement Fund—

**Fund 4297 FY 2002 Org 0441**

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>096</th>
<th>$10,000,000</th>
</tr>
</thead>
</table>

### 253—State Park Improvement Fund—

**Fund 3277 FY 2002 Org 0310**

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>096</th>
<th>$9,000,000</th>
</tr>
</thead>
</table>
Sec. 6. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand two.

**LEGISLATIVE**

254—Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2002 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>$922,000</td>
</tr>
</tbody>
</table>

**EXECUTIVE**

255—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2002 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>$450,000</td>
</tr>
</tbody>
</table>

256—Governor’s Office—

Office of Economic Opportunity
Fund 8797 FY 2002 Org 0100

1 Unclassified—Total .................. 096 $ 4,000,000

257—Governor's Office—

Commission for National and Community Service

Fund 8800 FY 2002 Org 0100

1 Unclassified—Total .................. 096 $ 3,502,741

258—Auditor's Office—

National White Collar Crime Center

Fund 8807 FY 2002 Org 1200

1 Unclassified—Total .................. 096 $ 9,742,625

259—Department of Agriculture

Fund 8736 FY 2002 Org 1400

1 Unclassified—Total .................. 096 $ 2,288,929

260—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)
3002  APPROPRIATIONS  [Ch. 1

Fund 8737 FY 2002 Org 1400

1  Unclassified—Total ................ 096 $  800,933

261—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2002 Org 1400

1  Unclassified—Total ................ 096 $  168,348

DEPARTMENT OF ADMINISTRATION

262—West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2002 Org 0228

1  Unclassified—Total ................ 096 $  220,579

263—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2002 Org 0230

1  Unclassified - Total ................ 096 $  23,606,744

DEPARTMENT OF EDUCATION

264—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2002 Org 0402
1 Unclassified—Total .................. 096 $40,013,595

265—State Department of Education—

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2002 Org 0402

1 Unclassified—Total .................. 096 $75,008,898

266—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2002 Org 0402

1 Unclassified—Total .................. 096 $24,014,995

267—State Department of Education—

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2002 Org 0402

1 Unclassified—Total .................. 096 $46,015,934

DEPARTMENT OF EDUCATION AND THE ARTS

268—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)
Fund 8841 FY 2002 Org 0431

1 Unclassified—Total ................ 096 $ 791,753

269—Division of Culture and History
(WV Code Chapter 29)

Fund 8718 FY 2002 Org 0432

1 Unclassified—Total ................ 096 $ 2,474,170

270—Library Commission
(WV Code Chapter 10)

Fund 8720 FY 2002 Org 0433

1 Unclassified—Total ................ 096 $ 1,925,102

271—Educational Broadcasting Authority
(WV Code Chapter 10)

Fund 8721 FY 2002 Org 0439

1 Unclassified—Total ................ 096 $ 2,955,000

272—State Board of Rehabilitation—
Division of Rehabilitation Services
(WV Code Chapter 18)

Fund 8734 FY 2002 Org 0932

1 Unclassified—Total ................ 096 $ 46,323,075
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

273—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2002 Org 0506

1 Unclassified—Total .................. 096 $ 4,805,029

274—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2002 Org 0506

1 Unclassified—Total .................. 096 $ 55,825,235

275—Division of Health—

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2002 Org 0506

1 Unclassified—Total .................. 096 $ 16,000,000

276—Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2002 Org 0510

1 Unclassified—Total .................. 096 $ 503,874
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**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**278—Adjutant General—State Militia**
(WV Code Chapter 15)

Fund 8726 FY 2002 Org 0603

1 Unclassified—Total . . . . . . . . . . . . . . 096 $29,309,869

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

Fund 8727 FY 2002 Org 0606

1 Unclassified—Total . . . . . . . . . . . . . . 096 $2,264,449

**280—Division of Corrections**
(WV Code Chapters 25, 28, 49 and 62)

Fund 8836 FY 2002 Org 0608

1 Unclassified—Total . . . . . . . . . . . . . . 096 $50,000

**281—West Virginia State Police**
(WV Code Chapter 15)

Fund 8741 FY 2002 Org 0612
1 Unclassified—Total ................. 096 $ 1,881,562

282—Division of Veterans’ Affairs—

Veterans’ Home

(WV Code Chapter 9A)

Fund 8728 FY 2002 Org 0618

1 Unclassified—Total ................. 096 $ 525,519

283—Division of Criminal Justice Services

(Executive Order)

Fund 8803 FY 2002 Org 0620

1 Unclassified—Total ................. 096 $ 14,528,117

DEPARTMENT OF TAX AND REVENUE

284—Tax Division—

(WV Code Chapter 11)

Fund 7069 FY 2002 Org 0702

1 Unclassified—Total ................. 096 $ 25,000

DEPARTMENT OF TRANSPORTATION

285—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2002 Org 0805

1 Unclassified—Total ................. 096 $ 11,596,045
286—Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2002 Org 0802

1 Unclassified—Total ............... 096 $ 5,970,367

287—Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2002 Org 0806

1 Unclassified—Total ............... 096 $ 1,850,000

288—Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2002 Org 0807

1 Unclassified—Total ............... 096 $ 1,450,000

**BUREAU OF COMMERCE**

289—Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2002 Org 0305

1 Unclassified—Total ............... 096 $ 1,473,137

290—Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2002 Org 0306
1 Unclassified—Total .................. 096 $ 480,296

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

Fund 8705 FY 2002 Org 0307

1 Unclassified—Total .................. 096 $ 7,304,130

292—Division of Labor
(WV Code Chapters 21 and 47)

Fund 8706 FY 2002 Org 0308

1 Unclassified—Total .................. 096 $ 514,425

293—Division of Natural Resources
(WV Code Chapter 20)

Fund 8707 FY 2002 Org 0310

1 Unclassified—Total .................. 096 $ 6,532,966

294—Division of Miners’ Health—
Safety and Training
(WV Code Chapter 22)

Fund 8709 FY 2002 Org 0314

1 Unclassified—Total .................. 096 $ 582,288

DEPARTMENT OF ENVIRONMENT

295—Division of Environmental Protection
3010 APPROPRIATIONS

(WV Code Chapter 22)

Fund 8708 FY 2002 Org 0313

1 Unclassified—Total ............... 096 $113,144,591

BUREAU OF SENIOR SERVICES

296—Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2002 Org 0508

1 Unclassified—Total ................ 096 $13,126,526

BUREAU OF EMPLOYMENT PROGRAMS

297—Bureau of Employment Programs—

(WV Code Chapter 21A)

Fund 8835 FY 2002 Org 0323

1 Unclassified—Total ................ 096 $512,657

2 Pursuant to the requirements of 42 U.S.C. 1103, Section
3 903 of the Social Security Act, as amended, and the provisions
4 of section nine, article nine, chapter twenty-one-a of the code
5 of West Virginia, one thousand nine hundred thirty-one, as
6 amended, the above appropriation to Unclassified shall be used
7 by the bureau of employment programs for the specific purpose
8 of administration of the state's unemployment insurance
9 program or job service activities, subject to each and every
10 restriction, limitation or obligation imposed on the use of the
11 funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS
298—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2002 Org 0926

1 Unclassified—Total .................. 096 $ 1,472,262

299—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2002 Org 0926

1 Unclassified—Total .................. 096 $ 264,391

2 Total TITLE II, Section 6—

3 Federal Funds ................. $1,815,574,168

Sec. 7. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2002.

300—Governor's Office—

Office of Economic Opportunity

Fund 8799 FY 2002 Org 0100

1 Unclassified—Total ............... 096 $ 7,151,280

301—West Virginia Development Office—

Community Development
### Appropriations

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1 Unclassified—Total .......................... 096 $ 28,320,538

#### 302—Bureau of Employment Programs—
*Job Training Partnership Act*

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1 Unclassified—Total .......................... 096 $ 0

#### 303—Bureau of Employment Programs—
*Workforce Investment Act*

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1 Unclassified—Total .......................... 096 $ 57,657,193

#### 304—State Department of Education—
*Education Grant*

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1 Unclassified—Total .......................... 096 $ 112,008,657

#### 305—Division of Health—
*Maternal and Child Health*

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1 Unclassified—Total .......................... 096 $ 8,839,332

#### 306—Division of Health—
*Preventive Health*
Fund 8753 FY 2002 Org 0506
1 Unclassified—Total .................. 096 $ 2,228,651

307—Division of Health—
Substance Abuse Prevention and Treatment

Fund 8793 FY 2002 Org 0506
1 Unclassified—Total .................. 096 $11,547,885

308—Division of Health—
Community Mental Health Services

Fund 8794 FY 2002 Org 0506
1 Unclassified—Total .................. 096 $ 3,305,314

309—Division of Health—
Abstinence Education Program

Fund 8825 FY 2002 Org 0506
1 Unclassified—Total .................. 096 $ 975,895

310—Division of Human Services—
Energy Assistance

Fund 8755 FY 2002 Org 0511
1 Unclassified—Total .................. 096 $16,049,078

311—Division of Human Services—
Social Services
Fund 8757 FY 2002 Org 0511

1 Unclassified—Total .................. 096 $14,654,701

312—Division of Human Services—
Temporary Assistance Needy Families

Fund 8816 FY 2002 Org 0511

1 Unclassified—Total .................. 096 $225,153,655

313—Division of Human Services—
Child Care and Development

Fund 8817 FY 2002 Org 0511

1 Unclassified—Total .................. 096 $38,004,871

314—Division of Criminal Justice Services—
Juvenile Accountability Incentive

Fund 8829 FY 2002 Org 0620

1 Unclassified—Total .................. 096 $2,149,049

315—Division of Criminal Justice Services—
Local Law Enforcement

Fund 8833 FY 2002 Org 0620

1 Unclassified—Total .................. 096 $435,151

2 Total TITLE II, Section 7—

3 Federal Block Grants .............. $528,481,250
Sec. 8. Awards for claims against the state.—There are hereby appropriated for the remainder of the fiscal year 2000-2001 and to remain in effect until June 30, 2002, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 2817, regular session, 2001, and enrolled senate bill no. 455, regular session, 2001, general revenue funds of $7,198,113.00 for payment of claims against the state.

There are hereby appropriated for the remainder of the fiscal year 2000-2001 and to remain in effect until June 30, 2002, from the funds as designated, in the amounts as specified and for the claimants named in enrolled house bill 2817, regular session, 2001, and enrolled senate bill 455, regular session, 2001, special revenue funds of $325,929.42 and state road funds of $103,890.14 for payment of claims against the state.

Sec. 9. Appropriations from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2002 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand one, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand one from the fiscal year ending the thirtieth day of June two thousand one.

In the event that surplus revenues available on the thirty-first day of July, two thousand one, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated, and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second
appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

316—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2002 Org 0307

1 Sunny Day Fund—Surplus .......... 339 $ 0

317—West Virginia Development Office

(WV Code Chapter 5B29)

Fund 0256 FY 2002 Org 0307

1 Guaranteed Work Force Grant —
2 Surplus ................................. 496 $ 0

318—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2002 Org 0608

1 Technology Improvements—Surplus . . 725 $ 0

2 The above appropriation is intended to be expended for a management information system with emphasis on an automated inmate management system including but not limited to housing, tracking, programs, disciplinary action and other inmate information.
1 Capital Improvements—Capitol Complex—
2 Surplus 676 .......................... $0

3 The above appropriation is intended to be expended for capital improvements to the capitol complex including but not limited to repairs, renovations, capital expenditure and general construction or reconstruction projects.

7 Total TITLE II, Section 9—
8 Surplus Accrued .............. $0

Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year two thousand two appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.
Sec. 11. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year two thousand two, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year two thousand two to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 13. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.
Sec. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 15. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include
personal services, annual increment, employee benefits, current
expenses, repairs and alterations, equipment and capital outlay,
where not otherwise specifically provided and except as
otherwise provided in TITLE I—GENERAL PROVISIONS,
Sec. 3.

Sec. 17. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is appropriated
for expenditure in accordance with section sixteen, article
nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

TITLE III—ADMINISTRATION.
§1. Appropriations conditional.
§2. Legislative intent.

Section 1. Appropriations conditional.—The expenditure
of the appropriations made by this act, except those appropria-
tions made to the legislative and judicial branches of the state
government, are conditioned upon the compliance by the
spending unit with the requirements of article two, chapter
five-a of the code.

Where spending units or parts of spending units have been
absorbed by or combined with other spending units, it is the
intent of this act that reappropriations shall be to the succeeding
or later spending unit created, unless otherwise indicated.

Sec. 2. Legislative intent. It is the intent of the Legislature
that the duly appointed members of the conference committee
on this bill may formulate and set forth in a budget digest
recommendations for the expenditure of money appropriated by
this bill after its enactment. It is the further intent of the
Legislature that the recommendations set forth in the budget
digest are an expression of legislative intent, do not have the
force and effect of law, and may not be construed to alter the
lawful enactment of this bill.
Sec. 3. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 2

(H. B. 103 — By Delegate Michael)

[Passed April 23, 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 one million three hundred thousand dollars from the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2001, organization 0218; in the amount of three million dollars from the income tax reserve fund, fund 1313, fiscal year 2001, organization 1300; in the amount of one million dollars from the public service commission, fund 8623, fiscal year 2001, organization 0926; and in the amount of six hundred fifty thousand dollars from the West Virginia health care authority, fund 5375, fiscal year 2001, organization 0507.

WHEREAS, The Legislature finds that the account balances in the board of risk and insurance management — premium tax savings fund, fund 2367, fiscal year 2001, organization 0218; in the income tax reserve fund, fund 1313, fiscal year 2001, organization 1300; in the public service commission, fund 8623, fiscal year 2001, organization 0926; and in the West Virginia health care authority, fund 5375,
fiscal year 2001, organization 0507 exceed that which is necessary for
the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amounts of one million three hundred thousand
dollars from the board of risk and insurance management —
premium tax savings fund, fund 2367, fiscal year 2001,
organization 0218; three million dollars from the income tax
reserve fund, fund 1313, fiscal year 2001, organization 1300;
one million dollars from the public service commission, fund
8623, fiscal year 2001, organization 0926; and six hundred fifty
thousand dollars from the West Virginia health care authority,
fund 5375, fiscal year 2001, organization 0507, be decreased by
expiring the above amounts to the unappropriated surplus
balance of the state fund, general revenue, to be available for
appropriation during the fiscal year ending the thirtieth day of
June, two thousand one.

The purpose of this bill is to expire the sum of one million
three hundred thousand dollars from the board of risk and
insurance management — premium tax savings fund, fund
2367, fiscal year 2001, organization 0218; three million dollars
from the income tax reserve fund, fund 1313, fiscal year 2001,
organization 1300; one million dollars from the public service
commission, fund 8623, fiscal year 2001, organization 0926;
and six hundred fifty thousand dollars from the West Virginia
health care authority, fund 5375, fiscal year 2001, organization
0507, to the unappropriated surplus balance in the state fund,
general revenue, for the fiscal year ending the thirtieth day of
June, two thousand one, to be available for appropriation during
the fiscal year two thousand one.
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 million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; in the amount of eighteen thousand nine hundred twenty-eight dollars from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; in the amount of twenty thousand dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; in the amount of two thousand one hundred ninety-seven dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; in the amount of one hundred eighteen thousand seven hundred ninety-three dollars and twenty cents from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; in the amount of six hundred thirty-eight dollars and twelve cents from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; in the amount of one thousand four hundred thirty-three dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and in the amount of seventy-six thousand two hundred and five dollars from the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322.

WHEREAS, The Legislature finds that the account balances the joint expenses, fund 0175, fiscal year 1998, organization 2300,
activity 642; the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amounts of three million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; in the amount of eighteen thousand nine hundred twenty-eight dollars from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; in the amount of twenty thousand dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; in the amount of two thousand one hundred ninety-seven dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; in the amount of one hundred eighteen thousand seven hundred ninety-three dollars and twenty cents from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; in the amount of six hundred thirty-eight dollars and twelve cents from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; in the amount of one thousand four hundred thirty-three dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and in the amount of seventy-six thousand two hundred and five dollars from the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322, be decreased by expiring the above amounts to the unappropriated surplus balance of the state fund, general revenue, to be available for appropriation
during the fiscal year ending the thirtieth day of June, two thousand one.

The purpose of this bill is to expire the sum of three million dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 642; eighteen thousand nine hundred twenty-eight dollars from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 377; twenty thousand dollars from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 377; two thousand one hundred ninety-seven dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1995, organization 2300, activity 319; one hundred eighteen thousand seven hundred ninety-three dollars and twenty cents from the joint expenses, fund 0175, fiscal year 1997, organization 2300, activity 319; six hundred thirty-eight dollars and twelve cents from the joint expenses, fund 0175, fiscal year 1998, organization 2300, activity 319; one thousand four hundred thirty-three dollars and twenty-five cents from the joint expenses, fund 0175, fiscal year 1999, organization 2300, activity 319; and seventy-six thousand two hundred and five dollars from the division of labor, fund 0260, fiscal year 1998, organization 0308, activity 322, to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand one, to be available for appropriation during the fiscal year two thousand one.

CHAPTER 4

(H. B. 105 — By Delegate Michael)

[Passed April 23, 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 department of military affairs and public safety, division of corrections — correctional units, fund 0450, fiscal year 2001, organization 0608 in the amount of eight million dollars, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand one.

WHEREAS, It appears 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 the department of military affairs and public safety, division of corrections — correctional units, fund 0450, fiscal year 2001, organization 0608, be supplemented and amended by increasing the total appropriation by eight million dollars as follows:

1 TITLE II—APPROPRIATIONS.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

62—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2001 Org 0608
CHAPTER 5

(S. B. 1007 — By Senators Craigo, Plymale and Jackson)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to higher education revenue bonds generally; uses for bond proceeds, including motor vehicle parking facilities; removing certain requirement on bond trustee; authorizing gross revenues of facilities to be pledged; and authorizing certain fees to be paid from bond proceeds.

Be it enacted by the Legislature of West Virginia:

That sections thirteen, fourteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two and twenty-three, article twenty-three, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§ 18-23-13. Construction and operation of dormitories, housing facilities, food service facilities and motor vehicle parking facilities for teachers and students.

§ 18-23-14. Construction and operation of gymnasiums, etc.

§ 18-23-16. Cost of dormitories, housing facilities, food service facilities and motor vehicle parking facilities to be paid from proceeds of revenue bonds.

§ 18-23-17. Agreements with trustees for bondholders.

§ 18-23-18. Operation and control of fiscal affairs of dormitories, housing facilities, food service facilities and motor vehicle parking facilities.

§ 18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, housing facilities, food service facilities or motor vehicle parking facilities; redemption of bonds.

§ 18-23-20. When dormitories, housing facilities, food service facilities or motor vehicle parking facilities become property of state.

§ 18-23-21. State debt not to be incurred for dormitories, housing facilities, food service facilities or motor vehicle parking facilities; federal and private assistance; provisions separable.

§ 18-23-22. Sections regarded as supplementary.

§ 18-23-23. Approval of dormitories, housing facilities, food service facilities or motor vehicle parking facilities.
§18-23-13. Construction and operation of dormitories, housing facilities, food service facilities and motor vehicle parking facilities for teachers and students.

The governing boards are hereby authorized to provide, construct, erect, improve, equip, maintain and operate dormitories, housing facilities, food service facilities and motor vehicle parking facilities on land owned by the state for students or teachers at the various state institutions of higher education under their control and the cost of construction, erection, improvement or equipment may be payable by means of or with the proceeds of the revenue bonds hereinafter authorized. The governing boards have power and authority to employ engineering, architectural and construction experts and other employees as may be necessary in their judgment and fix their compensation, all of whom shall do the work as the governing boards direct, all of which shall be included as part of the cost of construction and equipment thereof.

§18-23-14. Construction and operation of gymnasiums, etc.

The governing boards, within their discretion, are hereby authorized to provide, construct, erect, improve, equip, maintain and operate gymnasiums or stadia for athletic games, contests or exhibitions or physical training, dormitories, housing facilities, food service facilities and motor vehicle parking facilities, swimming pools or such other structures or buildings, for students, teachers, officers and employees at the various state institutions of higher education under their control and management subject to the provisions and limitations of sections thirteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four of this article.

§18-23-16. Cost of dormitories, housing facilities, food service facilities and motor vehicle parking facilities to be paid from proceeds of revenue bonds.
The governing boards may pay the cost, as defined in sections thirteen through twenty-four, inclusive, of this article, of any one or more of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities out of the proceeds of revenue bonds of the state. The governing boards are authorized to issue revenue bonds of the state by a resolution of the board which shall recite an estimate by the board of the cost, the principal and interest of which bonds shall be payable solely from the special fund or funds herein provided for the payment. The board, after any issue of bonds or simultaneously therewith, may issue further issues of bonds to pay the cost of any other one or more of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities in the manner and subject to all of the provisions herein contained as to the bonds first mentioned in this section. All these bonds shall have and are hereby declared to have all the qualities of negotiable instruments under the Uniform Commercial Code. These bonds shall bear interest at such rates, payable at such times, and shall mature in not more than thirty years from their date or dates and may be made redeemable at the option of the state, to be exercised by the governing boards, at a price and under terms and conditions as they may fix prior to the issuance of the bonds. They shall determine the form of the bonds, which bonds shall be signed by the governor and the president of the appropriate governing board, under the great seal of the state and attested by the secretary of state. In case any of the officers whose signatures appear on the bonds shall cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until the delivery. The governing boards shall fix the denominations of the bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of the state or, at the option of the holder, at some bank or trust company within or outside of the state, to be named in the bonds, in lawful money of the United States of America.
The bonds and the interest thereon shall be exempt from taxation by the state of West Virginia or any county, school district or municipality therein. The governing boards may provide for the registration of the bonds in the name of the owner as to principal alone or as to both principal and interest under the terms and conditions as the governing boards may determine and shall sell the bonds in such manner as they may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities.

The proceeds of the bonds shall be used solely for the payment of the cost of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities and costs of issuance of the bonds, which costs shall be deemed to include the cost of site acquisition or construction thereof, the cost of all property, rights, easements and franchises deemed necessary or convenient therefor and for the improvements determined upon as provided in this article; interest upon bonds prior to and during construction or acquisition and for a reasonable period after completion of construction or of acquisition of the improvements; engineering, architectural and legal expenses; expense for estimates of cost and of revenues; expenses for plans, specifications and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the improvements; and other expenses as may be necessary or incidental to the financing herein authorized and the construction or acquisition of the improvements and the placing thereof in operation. The bonds shall be authorized and approved by resolution of the appropriate governing board. If the proceeds of the bonds, by error or otherwise, shall be less than the cost of the dormitories, housing facilities, food service facilities and motor vehicle parking facilities, additional parity
bonds may in like manner be issued to provide the amount of
the deficit and, unless otherwise provided in the trust agreement
hereinafter mentioned, shall be deemed to be of the same issue
and shall be entitled to payment from the same fund, without
preference or priority of the bonds first issued for the same
dormitories, housing facilities, food service facilities and motor
vehicle parking facilities. If the proceeds of bonds issued for
any dormitories, housing facilities, food service facilities and
motor vehicle parking facilities shall exceed the cost thereof,
the surplus shall be paid into the fund hereinafter provided for
payment of the principal and interest of the bonds. The fund
may be used for the purchase of any of the outstanding bonds
payable from the fund at the market price, but not exceeding the
price, if any, at which the bonds in the same year shall be
redeemable and all bonds redeemed or purchased shall forth-
with be cancelled and shall not again be issued.

Prior to the preparation of definitive bonds, the governing
boards may under like restrictions issue temporary bonds,
exchangeable for definitive bonds upon the issuance of the
latter. The revenue bonds may be issued without any other
proceedings or the happening of any other conditions and things
than those proceedings, conditions and things which are
specified and required by this article or by the constitution of
the state.

§18-23-17. Agreements with trustees for bondholders.

The governing boards may enter into an agreement or
agreements with any trust company or with any bank having
trust powers, either within or outside of the state, as trustee for
the holders of the bonds issued hereunder, setting forth therein
such duties of the state and of the governing boards in respect
of the acquisition, construction, erection, improvement,
maintenance, operation, repair and insurance of the dormitories,
housing facilities, food service facilities and motor vehicle
parking facilities, the conservation and application of all
moneys, the insurance of moneys on hand or on deposit and the
rights and remedies of the trustee and the holders of the bonds,
as may be agreed on with the original purchasers of the bonds,
and including therein provisions restricting the individual right
of action of bondholders as is customary in trust agreements
respecting bonds and debentures of corporations, protecting and
enforcing the rights and remedies of the trustee and the bond-
holders and providing for approval by the original purchasers
of the bonds, of the appointment of consulting engineers and of
the security given by those who contract to make improvements
and by any bank or trust company in which the proceeds of
bonds or rents, fees or charges shall be deposited and for
approval by the consulting engineers of all contracts for
improvements. All expenses incurred in carrying out an
agreement may be treated as a part of the cost of maintenance,
operation and repair of the dormitories, housing facilities, food
service facilities and motor vehicle parking facilities affected
by the agreement. Any agreement entered into by the governing
boards shall be binding in all respects on the governing boards
from time to time in accordance with its terms and all the
provisions thereof shall be enforceable by appropriate proceed-
ings at law or in equity, or otherwise.

§18-23-18. Operation and control of fiscal affairs of dormitories,
housing facilities, food service facilities and motor
vehicle parking facilities.

The governing boards shall properly maintain, repair,
operate, manage and control the fiscal affairs of the dormitories,
housing facilities, food service facilities and motor vehicle
parking facilities, fix the rates of rents, fees or charges and
establish rules for the use and operation of such dormitories,
housing facilities, food service facilities and motor vehicle
parking facilities for the welfare of the students or teachers and
may make and enter into all contracts or agreements necessary
and incidental to the performance of their duties and the
execution of their powers under this article.
§18-23-19. Payment of principal and interest of construction bonds from revenues of dormitories, housing facilities, food service facilities or motor vehicle parking facilities; redemption of bonds.

Whenever bonds are issued for the construction, erection or equipment of dormitories, housing facilities, food service facilities or motor vehicle parking facilities or for the improvement or equipment of existing dormitories, housing facilities, food service facilities or motor vehicle parking facilities, or for any or all of the purposes, as joint or several projects, for which a single or several issues of bonds may be issued within the discretion of the governing boards, rents, fees and charges shall be fixed, charged and collected in connection with the use or occupancy of, or service to be thereby rendered and furnished by, dormitories, housing facilities, food service facilities or motor vehicle parking facilities of the particular state educational institution as the governing board thereof shall determine, and shall be so fixed or adjusted, as to provide a fund sufficient to pay the principal and interest of each issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, operating and insuring such dormitories, housing facilities, food service facilities or motor vehicle parking facilities. Whenever bonds are issued to finance the construction and erection of dormitories, housing facilities, food service facilities or motor vehicle parking facilities, together with additions or extensions to existing dormitories, housing facilities, food service facilities and motor vehicle parking facilities for students or teachers at state institutions of higher education, either the combined gross revenues derivable from all the dormitories, housing facilities, food service facilities or motor vehicle parking facilities or the separate gross revenues derivable from the dormitories, the housing facilities, the food service facilities or the motor vehicle parking facilities of the particular state institution of higher education as the governing board thereof shall determine, may be pledged to provide a fund
sufficient to pay the principal and interest of the issue of bonds
and of any other bonds thereafter issued for the same purpose
and to provide an additional fund to pay the cost of maintaining,
repairing, operating and insuring such dormitories, housing
facilities, food service facilities or motor vehicle parking
facilities. Except as may otherwise be provided in the trust
agreement authorized in section seventeen of this article, the
rents, fees and charges from the dormitories, housing facilities,
food service facilities or motor vehicle parking facilities for
which a single issue of bonds is issued, in an amount sufficient
to pay, when due, the principal of, redemption premium, if any,
and interest on such bonds shall be transmitted each month to
the municipal bond commission and by it placed in a special
fund which is hereby pledged to and charged with the payment
of the principal of the bonds and the interest thereon and to the
redemption or repurchase of the bonds, the special fund to be a
fund for all these bonds without distinction or priority of one
over another. The moneys in the special fund, less any reserve
for payment of interest, if not used by the municipal bond
commission within a reasonable time for the purchase of bonds
for cancellation at a price not exceeding the market price and
not exceeding the redemption price, shall be applied to the
redemption by lot of any bonds which by their terms are then
redeemable, at the redemption price then applicable: Provided,
That if said revenue bonds are sold to and purchased by the
United States of America or any federal or public agency or
department created under and by virtue of the laws of the
United States of America, then at the option of the United
States of America or such federal or public agency or depart-
ment in lieu of the moneys being transmitted to the municipal
bond commission and by it placed in a special fund the rents,
fees and charges from the dormitories, housing facilities, food
service facilities or motor vehicle parking facilities, in an
amount sufficient to pay, when due, the principal of, redemp-
tion premium, if any, and interest on the bonds may be trans-
mitted and paid to a trustee designated and named by the United
States of America or a federal or public agency or department in its agreement and contract with the appropriate governing board, for the payment of the principal of such bonds and the interest thereon, under such terms and conditions as may be agreed upon.

§18-23-20. When dormitories, housing facilities, food service facilities or motor vehicle parking facilities become property of state.

When the particular bonds for any dormitory or dormitories, housing facilities, food service facilities or motor vehicle parking facilities and the interest on the bonds shall have been paid or a sufficient amount has been provided for their payment and shall continue to be held for that purpose, the dormitories, housing facilities, food service facilities or motor vehicle parking facilities shall thereafter be exclusively the property of the state of West Virginia and thereafter the rents, fees and charges collected for the use or occupancy of, or service rendered and furnished by, the dormitories, housing facilities, food service facilities or motor vehicle parking facilities shall be paid into the state board of investments as provided by the provisions of section two, article two, chapter twelve of this code, as amended, and used and expended for the benefit of the institution where collected: Provided, That nothing in this section precludes any governing board from pledging the rents, fees and charges to pay the principal and interest on any bonds thereafter issued to construct new or to improve existing dormitories, housing facilities, food service facilities or motor vehicle parking facilities pursuant to section nineteen of this article. The rents, fees and charges shall be paid as may be provided in a trust agreement authorized pursuant to section seventeen of this article and in the absence of such trust agreement as provided in section nineteen of this article.

§18-23-21. State debt not to be incurred for dormitories, housing facilities, food service facilities or motor vehicle
Nothing in these sections dealing with dormitories, housing facilities, food service facilities or motor vehicle parking facilities may be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the constitution of this state in relation to the state debt. The dormitories, housing facilities, food service facilities or motor vehicle parking facilities herein are of the character described as self-liquidating projects under the laws of this state.

Any governing board authorized to issue bonds under the provisions of this article is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of construction of the dormitories, housing facilities, food service facilities or motor vehicle parking facilities and the other purposes herein authorized, from the United States of America or a federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or a federal or public agency or department of the United States or with any private agency, corporation or individual. The provisions and parts of this section are separable and are not matters of mutual essential inducement and it is the intention to confer the whole or any part of the powers herein provided for and if any of the sections or provisions, or parts thereof, are for any reason illegal or invalid, it is the intention that the remaining sections and provisions or parts thereof shall remain in full force and effect.

§18-23-22. Sections regarded as supplementary.
Sections thirteen through twenty-four, inclusive, of this article provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplementary and additional to powers conferred by other laws: Provided, That when any revenue bonds are issued hereunder for the purposes provided by sections thirteen through twenty-four, inclusive, of this article, for the benefit of any particular state institution of higher education, no dormitories, housing facilities, food service facilities or motor vehicle parking facilities shall thereafter be constructed, built or erected at the state institution of higher education until the appropriate governing board, by investigation had thereon, under the rules as it may prescribe, determines that there is an imperative public need for the construction, building or erection of the dormitories, housing facilities, food service facilities or motor vehicle parking facilities and that their construction, building or erection and subsequent maintenance or operation will not materially injure the revenues of and from any dormitories, housing facilities, food service facilities or motor vehicle parking facilities constructed, built, erected, maintained or operated at the state institution of higher education under the provisions of sections thirteen through twenty-four, inclusive, of this article.

§18-23-23. Approval of dormitories, housing facilities, food service facilities or motor vehicle parking facilities.

It is not necessary to secure from any officer or board not named in sections thirteen through twenty-four, inclusive, of this article any approval or consent or any certificate or finding or to hold any election or to take any proceedings whatever, either for the acquisition, construction or erection of such dormitories, housing facilities, food service facilities or motor vehicle parking facilities, or the improvement thereof, or their maintenance, operation, repair or insurance or for the issuance of bonds hereunder, except such as are prescribed in the sections herein named or are required by the constitution of the state.
AN ACT to amend article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section eight, article nine-d, chapter eighteen of said code; to amend and reenact sections two, two-a, three, eight and eight-a, article four, chapter eighteen-a of said code; to amend and reenact section thirteen-c, article twenty-three, chapter nineteen of said code; to amend and reenact sections five and eighteen, article twenty-two, chapter twenty-nine of said code; to further amend said article by adding thereto a new section, designated section eighteen-a; to amend and reenact sections six and ten, article twenty-two-a of said chapter; to further amend said article by adding thereto two new sections, designated sections ten-b and ten-c; and to amend said chapter by adding thereto a new article, designated article twenty-two-b, all relating generally to lottery games, and providing for the distribution of funds generated therefrom; providing a senior citizen and certain disabled persons tax credit for property tax paid on the first ten thousand dollars of taxable assessed value of a homestead in this state; providing funding from funds generated from lottery games for the cost of the senior citizen and certain disabled persons tax credit and for salary increases for teachers, service personnel, members of the state police, corrections officers and other state employees;
increasing cap on bonds which may be issued by school building authority; authorizing lottery commission to enter into international lottery agreements; expenditure of lottery distributions; providing for administrative costs of state lottery commission; creating state excess lottery revenue fund and providing for distribution and expenditure of the moneys in the fund; expenditure of racetrack video lottery distributions; increasing allowable wager for racetrack video lottery; providing for distribution of amounts exceeding actual administrative costs of state lottery commission; providing for distribution of excess net terminal income; imposition and use of surcharge on excess of total of net terminal income; creating capital reinvestment fund and providing for its expenditure; allowing video lottery games to be played at restricted access adult-only facilities pursuant to licensure by alcohol beverage control commissioner and by lottery commission under regulation of lottery commission; providing short title and statements of legislative purposes, findings and intents; providing definition of words and terms; providing authority of lottery commission and director; prohibiting advertising or promotional activities of limited video lottery; providing requirements, qualification and fees for licensure necessary to participate in limited video lottery activities; providing for lottery commission action on applications for licenses; providing for background investigations of applicants for licenses; providing duties and responsibilities of limited video lottery licensees; providing additional duties of limited video lottery retailers who are permittees; requiring lottery commission approval of video lottery terminals; providing certain hardware and software requirements for video lottery terminals; providing for video lottery terminals to be connected to lottery commission's central computer system; establishing conditions for sale or lease of video lottery terminals; providing for allocation and distribution of video lottery terminals; limiting aggregate number of video lottery terminals that may be located at all licensed restricted access adult-only facilities; limiting number of video lottery
terminals that may be operated by one person; limiting number of video lottery terminals that may be placed on an authorized premises of a limited video lottery retailer; providing for permits to own, lease or operate video lottery terminals; providing for reservation of authority to have video lottery terminals on a premises for certain license applicants; providing for allocation of certain video lottery terminals through competitive bid; providing for reduction of number of video lottery terminals authorized in a license; providing for posting and dissemination of materials providing information relating to problem gambling; providing requirements for operating video lottery terminals; providing for placement and transportation of video lottery terminals; requiring registration decals; providing for maintenance and repair of video lottery terminals; providing for calculation, collection and distribution of gross terminal income generated from video lottery terminals and the state's share of gross terminal income; providing for examination of accounts, statements and records of permittees; providing administrative procedures; providing administrative and judicial remedies; providing administrative and judicial due process; providing certain civil money penalties; providing criminal penalties for certain violations; declaring video gambling machines contraband after specified date; providing for forfeiture, seizure and disposition of contraband; providing for distribution of proceeds of forfeiture; limiting applicability of certain local taxes or regulation on limited video lottery activities regulated by the state; and establishing the timing of implementation of the limited video lottery act provisions.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
15. Public Safety.
18. Education.
18A. School Personnel.
19. Agriculture.
29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

PART I. GENERAL.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens tax credit for property tax paid on first $10,000 of taxable assessed value of a homestead in this state.

1 (a) Allowance of credit. – A low-income person who is allowed a twenty thousand dollar homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes as provided in section three, article six-b, of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem
property taxes paid on up to the first ten thousand dollars of taxable assessed value of the homestead for property tax years that begin on or after the first day of January, two thousand two.

(b) Terms defined. – For purposes of this section:

(1) “Low income” means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(2) “Taxes paid” means the aggregate of regular levies, excess levies and bond levies extended against not more than ten thousand dollars of the taxable assessed value of a homestead that are paid during the calendar year, determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after the first day of January, two thousand two.

(c) Legislative rule. – The tax commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) Confidentiality. – The tax commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.

CHAPTER 15. PUBLIC SAFETY.
ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia state police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent is authorized to propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on the first day of July, two thousand one, and continuing thereafter, members shall receive annual salaries as follows:
### ANNUAL SALARY SCHEDULE (BASE PAY)

#### SUPERVISORY AND NONSUPERVISORY RANKS

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<th>Rank</th>
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<td>Cadet Trooper After Training</td>
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<td>Lieutenant Colonel</td>
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#### ANNUAL SALARY SCHEDULE (BASE PAY)

#### ADMINISTRATION

#### SUPPORT SPECIALIST CLASSIFICATION

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<td>VII</td>
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<tr>
<td>VIII</td>
<td></td>
<td>$47,144</td>
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#### ANNUAL SALARY SCHEDULE (BASE PAY)

#### CRIMINALIST CLASSIFICATION

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<tr>
<td>II</td>
<td></td>
<td>$32,528</td>
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</tbody>
</table>
Each member of the West Virginia state police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (f) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia state police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia state police as follows: At the end of five years of service with the West Virginia state police, the member shall receive a salary increase of six hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia state police in service at the time the schedules become effective shall be given credit for prior service and shall be paid such salaries as the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia state police, it is not appropriate to apply the provisions of state wage and hour
laws to them. Accordingly, members of the West Virginia state police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The superintendent shall, within thirty days after the effective date of this section, propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code, to establish the number of hours per month which constitute the standard work month for the members of the West Virginia state police. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The superintendent shall certify monthly to the West Virginia state police's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the West Virginia state police are not eligible for any supplemental payments.

(h) Each member of the West Virginia state police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of
his or her duties, and the bond shall be approved as to form by
the attorney general and as to sufficiency by the governor.

(i) Any member of the West Virginia state police who is
called to perform active duty for training or inactive duty
training in the national guard or any reserve component of the
armed forces of the United States annually shall be granted,
upon request, leave time not to exceed thirty calendar days for
the purpose of performing the active duty for training or
inactive duty training and the time granted may not be deducted
from any leave accumulated as a member of the West Virginia
state police.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate face value of bonds that may
be issued by the authority, for which the moneys in the school
building debt service fund are to be pledged, is four hundred
million dollars. The issuance of revenue bonds under the
provisions of this article shall be authorized from time to time
by resolution or resolutions of the school building authority,
which shall set forth the proposed projects and provide for the
issuance of bonds in amounts sufficient, when sold as hereinaf-
ter provided, to provide moneys considered sufficient by the
authority to pay the costs, less the amounts of any other funds
available for the costs or from any appropriation, grant or gift
for the costs: Provided, That bond issues from which bond
revenues are to be distributed in accordance with section fifteen
of this article shall not be required to set forth the proposed
projects in the resolution. The resolution shall prescribe the
rights and duties of the bondholders and the school building
authority, and for that purpose may prescribe the form of the
trust agreement hereinafter referred to. The bonds may be
issued from time to time, in such amounts; shall be of such
series; bear such date or dates; mature at such time or times not
exceeding forty years from their respective dates; bear interest
at such rate or rates; be in such denominations; be in such form,
either coupon or registered, carrying such registration,
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 redemption at
such prices not exceeding one hundred five percent of the
principal amount of the bonds; and be entitled to such priorities
on the revenues paid into the fund pledged for repayment of the
bonds as may be provided in the resolution authorizing the
issuance of the bonds or in any trust agreement made in
connection with the bonds: Provided, however, That revenue
bonds issued on or after the first day of January, one thousand
nine hundred ninety-four, which are secured by lottery proceeds
shall mature at such time or times not exceeding ten years from
their respective dates.

(b) The bonds shall be signed by the governor, and by the
president or vice president of the authority, under the great seal
of the state, attested by the secretary of state, and the coupons
attached to the bonds shall bear the facsimile signature of the
president or vice president of the authority. In case any of the
officers whose signatures appear on the bonds or coupons cease
to be officers before the delivery of the bonds, the signatures
shall nevertheless be valid and sufficient for all purposes the
same as if such officers had remained in office until such
delivery. The revenue bonds shall be sold in the manner
determined by the authority to be for the best interests of the
state.

(c) Any pledge of revenues made by the school building
authority for revenue bonds issued prior to the twentieth day of
July, one thousand nine hundred ninety-three, pursuant to this
article is valid and binding between the parties from the time
the pledge is made; and the revenues pledged shall immediately
be subject to the lien of the pledge without any further physical
delivery thereof or further act. The lien of the pledge is valid
and binding against all parties having claims of any kind in tort,
contract or otherwise, irrespective of whether the parties have
notice of the lien of the pledge, and the pledge shall be a prior
and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the
purpose or purposes as may be generally or specifically set
forth in the resolution authorizing those bonds and shall be
disbursed in the manner and with the restrictions, if any, that
the authority provides in the resolution authorizing the issuance
of the bonds or in the trust agreement hereinafter referred to
securing the same. If the proceeds of the bonds, by error in
calculations or otherwise, are less than the cost of any projects
specifically set forth in the resolution, additional bonds may in
like manner be issued to provide the amount of the deficiency;
and unless otherwise provided for in the resolution or trust
agreement hereinafter mentioned, the additional bonds shall be
considered to be of the same issue, and are entitled to payment
from the same fund, without preference or priority, as the bonds
before issued for the projects. If the proceeds of bonds issued
for the projects specifically set forth in the resolution authorizing
the bonds issued by the authority exceed the cost of the
bonds, the surplus may be used for any other projects deter-
mined by the school building authority or in any other manner
that the resolution authorizing the bonds provides. Prior to the
preparation of definitive bonds, the authority may, under like
restrictions, issue temporary bonds with or without coupons,
exchangeable for definitive bonds upon the issuance of the
definitive bonds.

(e) After the issuance of any of revenue bonds, the revenues
pledged for the revenue bonds shall not be reduced as long as
any of the revenue bonds are outstanding and unpaid except
under the terms, provisions and conditions that are contained in
the resolution, trust agreement or other proceedings under
which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds,
and bonds issued for combined purposes shall, together with the
interest on the bonds, are exempt from all taxation by the state
of West Virginia, or by any county, school district, municipality
or political subdivision thereof.

(g) To meet the operational costs of the school building
authority, the school building authority may transfer to a special
revenue account in the state treasury interest on any debt
service reserve funds created within any resolution authorizing
the issue of bonds or any trust agreement made in connection
with the bonds, for expenditure in accordance with legislative
appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section
shall be issued on parity with any existing school building
authority bonds previously issued under this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.
§18A-4-2a. State minimum salary bonus for classroom teachers with national board
certification.
§18A-4-3. State minimum annual salary increments for principals and assistant
principals.
§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

(a) Each teacher shall receive the amount prescribed in the
"state minimum salary schedule I" as set forth in this section,
specific additional amounts prescribed in this section or article,
and any county supplement in effect in a county pursuant to
section five-a of this article during the contract year: Provided,
That beginning on the first day of the second quarter of the
teacher’s employment term in the school year two thousand
one-two thousand two, and thereafter, each teacher shall receive
the amount prescribed in “state minimum salary schedule II” as
set forth in this section, specific additional amounts prescribed
in this section or article, and any county supplement in effect in
a county pursuant to section five-a of this article during the
contract year.

STATE MINIMUM SALARY SCHEDULE I

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(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective the first day of July, two thousand one, in addition to any amounts prescribed in the applicable state
minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.

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§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

(a) The Legislature hereby finds and declares that the rigorous standards and processes for certification by the national board for professional teaching standards (NBPTS) helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with the provisions of this section.

(b) One thousand dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the national board of professional teaching standards for the life of the certification, but in no event more than ten years for any one certification: Provided, That beginning on the first day of July, two thousand one, in lieu of the one thousand dollars, two thousand five hundred dollars shall be paid annually to each classroom teacher who holds a valid certificate issued by the national board of professional teaching standards for the life of the certification, but in no event more than ten years for any one certification.
(c) The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) One thousand dollars shall be paid for reimbursement once to each teacher who enrolls in the program for the national board for professional teaching standards certification and one thousand dollars shall be paid for reimbursement once to each teacher who completes the national board for professional teaching standards certification. Effective the first day of July, two thousand one, in lieu of the one thousand dollar payment for reimbursements, one-half the certification fee shall be paid for reimbursement once to each teacher who enrolls in the program for the national board for professional teaching standards certification and one-half the certification fee shall be paid for reimbursement once to each teacher who completes the national board for professional teaching standards certification. Teachers who achieve national board for professional teaching standards certification may be reimbursed a maximum of six hundred dollars for expenses actually incurred while obtaining the national board for professional teaching standards certification.

(e) The state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to one hundred teachers annually. Effective the first day of July, two thousand one, in lieu of the limit of one hundred teachers annually, the state board shall limit the number of teachers who receive the initial reimbursements of the certification fees set forth in subsection (d) to two hundred teachers annually. The state board shall establish selection criteria for the teachers by the legislative rule required pursuant to subsection (g) of this section.

(f) Subject to the provisions of subsection (e) of this section, funding for reimbursement of the certification fee and expenses actually incurred while obtaining the national board
for professional teaching standards certifications shall be administered by the state department of education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this subsection are insufficient, the state department shall prorate the reimbursements for expenses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this subsection, including needed retroactive payments.

(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, one thousand nine hundred ninety-six, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal, a principal’s salary increment and each assistant principal an assistant principal’s salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred ninety-six, from state funds appropriated for the salary increments.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the principal as prescribed in this article, by the appropriate percentage rate prescribed in this section according to the number of teachers supervised.
Effective the first day of July, two thousand one, in addition
to any salary increments for principals and assistant principals,
in effect on the first day of January, two thousand one, and paid
from local funds, the following schedule shall be used for
calculating the salary increment for principals and assistant
principals:

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<th>No. of Teachers Supervised</th>
<th>Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7</td>
<td>6.0%</td>
</tr>
<tr>
<td>8-14</td>
<td>6.5%</td>
</tr>
<tr>
<td>15-24</td>
<td>7.0%</td>
</tr>
<tr>
<td>25-38</td>
<td>7.5%</td>
</tr>
<tr>
<td>39-57</td>
<td>8.0%</td>
</tr>
<tr>
<td>58 and up</td>
<td>8.5%</td>
</tr>
</tbody>
</table>

The salary increment in this section for each assistant
principal shall be determined in the same manner as that for
principals, utilizing the number of teachers supervised by the
principal under whose direction the assistant principal works,
except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That if there is a change in circumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred ninety-six, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by 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 the reduction.

Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may be no less than ten
months. A month is defined as twenty employment days: Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

(d) No service employee, without his or her agreement, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If an employee whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely
from county funds: *Provided, That when engaged in duties of*
transporting students exclusively, aides shall not be regarded as
working an interrupted schedule. Maintenance personnel are
defined as personnel who hold a classification title other than
in a custodial, aide, school lunch, office or transportation
category as provided in section one, article one of this chapter.

(g) Upon the change in classification or upon meeting the
requirements of an advanced classification of or by any
employee, the employee’s salary shall be made to comply with
the requirements of this article, and to any county salary
schedule in excess of the minimum requirements of this article,
based upon the employee’s advanced classification and allow-
able years of employment.

(h) An employee’s contract as provided in section five,
article two of this chapter shall state the appropriate monthly
salary the employee is to be paid, based on the class title as
provided in this article and any county salary schedule in excess
of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and
class titles, set forth in section eight-a of this article, are defined
as follows:

(1) “Pay grade” means the monthly salary applicable to
class titles of service personnel;

(2) “Years of employment” means the number of years
which an employee classified as service personnel has been
employed by a board in any position prior to or subsequent to
the effective date of this section and including service in the
armed forces of the United States, if the employee were
employed at the time of his or her induction. For the purpose of
section eight-a of this article, years of employment shall be
limited to the number of years shown and allowed under the
(3) "Class title" means the name of the position or job held by service personnel;

(4) "Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means personnel who are employed in the county board office to manage and supervise accounts payable and/or payroll procedures;

(7) "Accounts payable supervisor" means personnel who are employed in the county board office who have primary responsibility for the accounts payable function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting courses from an accredited institution of higher education or have at least eight years of experience performing progressively difficult accounting tasks;

(8) "Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board, or who hold a high school diploma or have received a general educational development certificate.
Only personnel classified in an Aide II class title may be employed as an aide in any special education program;

(10) “Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year’s experience as an aide in special education;

(11) “Aide IV” means personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit;

(12) “Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment;

(13) “Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

(14) “Autism mentor” means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassification
status that includes aide and autism mentor titles, in accordance
with section eight-b of this article;

(15) "Braille or sign language specialist" means personnel
employed to provide braille and/or sign language assistance to
students: Provided, That if any employee has held or holds an
aide title and becomes employed as a braille or sign language
specialist, the employee shall hold a multiclassification status
that includes aide and braille or sign language specialist title, in
accordance with section eight-b of this article;

(16) "Bus operator" means personnel employed to operate
school buses and other school transportation vehicles as
provided by the state board;

(17) "Buyer" means personnel employed to review and
write specifications, negotiate purchase bids and recommend
purchase agreements for materials and services that meet
predetermined specifications at the lowest available costs;

(18) "Cabinetmaker" means personnel employed to
construct cabinets, tables, bookcases and other furniture;

(19) "Cafeteria manager" means personnel employed to
direct the operation of a food services program in a school,
including assigning duties to employees, approving requisitions
for supplies and repairs, keeping inventories, inspecting areas
to maintain high standards of sanitation, preparing financial
reports and keeping records pertinent to food services of a
school;

(20) "Carpenter I" means personnel classified as a carpen-
ter's helper;

(21) "Carpenter II" means personnel classified as a journey-
man carpenter;
(22) "Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained;

(23) "Clerk I" means personnel employed to perform clerical tasks;

(24) "Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines;

(25) "Computer operator" means qualified personnel employed to operate computers;

(26) "Cook I" means personnel employed as a cook's helper;

(27) "Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if the personnel have not been elevated to this classification within that period of time;

(28) "Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system;

(29) "Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects;

(30) "Custodian I" means personnel employed to keep buildings clean and free of refuse;
(31) "Custodian II" means personnel employed as a watchman or groundsman;

(32) "Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "custodian III," their duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing in this subdivision may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services." Directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel;

(35) "Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal;

(37) "Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal;
(38) "Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment;

(39) "Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment;

(43) "General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) "Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(45) "Graphic artist" means personnel employed to prepare graphic illustrations;
“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system;

“Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

“Heating and air conditioning mechanic II” means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

“Heavy equipment operator” means personnel employed to operate heavy equipment;

“Inventory supervisor” means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

“Key punch operator” means qualified personnel employed to operate key punch machines or verifying machines;

“Locksmith” means personnel employed to repair and maintain locks and safes;

“Lubrication man” means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system;
(55) "Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. These personnel should also have, the ability to work from blueprints and drawings;

(56) "Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(57) "Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(58) "Jnason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying;

(59) "Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(60) "Mechanic assistant" means personnel employed as a mechanic apprentice and helper;

(61) "Multiclassification" means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(62) "Office equipment repairman I" means personnel employed as an office equipment repairman apprentice or helper;
(63) "Office equipment repairman II" means personnel responsible for servicing and repairing all office machines and equipment. Personnel are responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair;

(64) "Painter" means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(65) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional: Provided, however, That if any employee has held or holds an aide title and becomes employed as a paraprofessional, the employee shall hold a multiclassification status that includes aide and paraprofessional titles in accordance with section eight-b of this article: Provided further, That once an employee who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(66) "Payroll supervisor" means personnel who are employed in the county board office who have primary responsibility for the payroll function, which may include the supervision of other personnel, and who have either completed twelve college hours of accounting from an accredited institution of
higher education or have at least eight years of experience performing progressively difficult accounting tasks;

(67) "Plumber I" means personnel employed as an apprentice plumber and helper;

(68) "Plumber II" means personnel employed as a journeyman plumber;

(69) "Printing operator" means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials;

(70) "Printing supervisor" means personnel employed to supervise the operation of a print shop;

(71) "Programmer" means personnel employed to design and prepare programs for computer operation;

(72) "Roofing/sheet metal mechanic" means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(73) "Sanitation plant operator" means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(74) "School bus supervisor" means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees;
(75) "Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(76) "Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied in this subdivision that would prevent the employees from holding or being elevated to a higher classification;

(77) "Secretary III" means personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "secretary II" or "secretary III" in this section for eight years;

(78) "Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board;

(79) "Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and
repair of vehicles, buses and other mechanical and mobile equipment used by the county school system;

(80) "Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(81) "Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(82) "Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods;

(83) "Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties; and

(84) "Welder" means personnel employed to provide acetylene or electric welding services for a school system.

(j) In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee is, notwithstanding any provisions in this code to the contrary, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee’s hours of employment or the methods or sources of compensation.

(k) Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.
(l) The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by the job classifications. The state superintendent of schools may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce the order.

(m) No service employee, without his or her written consent, may be reclassified by class title, nor may a service employee, without his or her written consent, be relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his or her salary, rate of pay, compensation or benefits for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provisions in this code to the contrary, service personnel who hold a continuing contract in a specific job classification and who are physically unable to perform the job’s duties as confirmed by a physician chosen by the employee shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if qualified as provided in section eight-e of this article.
§18A-4-8a. Service personnel minimum monthly salaries.

(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade I” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade I” set forth in this section: Provided, That beginning the first day of the second quarter of the employment term in the school year two thousand one-two thousand two the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade II” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade II” set forth in this section.

STATE MINIMUM PAY SCALE PAY GRADE I

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## State Minimum Pay Scale Pay Grade II

### Years of Employment

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<td>Payroll Supervisor</td>
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173 Printing Operator ........................................... B
174 Printing Supervisor ........................................ D
175 Programmer ....................................................... H
176 Roofing/Sheet Metal Mechanic .............................. F
177 Sanitation Plant Operator .................................... F
178 School Bus Supervisor ........................................ E
179 Secretary I ......................................................... D
180 Secretary II ......................................................... E
181 Secretary III ......................................................... F
182 Supervisor of Maintenance ................................... H
183 Supervisor of Transportation ................................. H
184 Switchboard Operator-Receptionist ....................... D
185 Truck Driver ......................................................... D
186 Warehouse Clerk ................................................ C
187 Watchman .......................................................... B
188 Welder ............................................................... F

(2) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent: Provided, That effective the first day of July, two thousand one, an additional twelve dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) An additional ten dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(A) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(B) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(C) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(D) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(E) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(F) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(G) Effective the first day of July, two thousand one, a service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(H) Effective the first day of July, two thousand one, a service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(I) Effective the first day of July, two thousand one, a service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(J) Effective the first day of July, two thousand one, a service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(K) Effective the first day of July, two thousand one, a service employee who holds a bachelor’s degree; and

(L) Effective the first day of July, two thousand one, a service employee who holds a master’s degree.

(4) When any part of a school service employee’s daily shift of work is performed between the hours of six o’clock p.m. and five o’clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

(5) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee’s usual hourly rate.

(6) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(7) No service employee may have his or her daily work schedule changed during the school year without the employee’s written consent and the employee’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(8) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee’s daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved
both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all
necessary protective equipment and maintain all records required by the Environmental Protection Act.

(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of certificated professional personnel" means that certificated professional personnel is present, with and accompanying the aide.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-13c. Expenditure of racetrack video lottery distribution.

(a) Funds received by the racing commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision (5), subsection (a), section 10b, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Racetrack Video Lottery Account." Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer.
(b) Funds in this account shall be allocated and expended as follows:

(1) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account plus the amount then remaining of the June thirtieth, one thousand nine hundred ninety-seven, balance in the separate account previously established for the West Virginia breeders classic under section thirteen of this article, shall be used by the commission for promotional activities, advertising, administrative costs and purses for the West Virginia thoroughbred breeders classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

(2) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia derby to be held at a thoroughbred racetrack which does not participate in the West Virginia thoroughbred development fund.

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection (b) have been deposited into separate bank accounts for use in connection with the West Virginia thoroughbred breeders classics and the West Virginia derby, the commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia racing commission special account - West Virginia greyhound breeding development fund.
(B) At those thoroughbred racetracks that have participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be equally divided between the West Virginia thoroughbred breeders classic and the West Virginia thoroughbred development fund.

(C) At those thoroughbred horse racetracks which do not participate in the West Virginia thoroughbred development fund, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia racing commission before the funds are expended for any of the purposes authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

§29-22-18a. State excess lottery revenue fund.
§29-22-5. State lottery commission; powers and duties; cooperation of other agencies.

(a) The commission has the authority to:

(1) Promulgate rules in accordance with chapter twenty-nine-a of this code: Provided, That those rules promulgated by the commission that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible;

(2) Establish rules for conducting lottery games, a manner of selecting the winning tickets and manner of payment of prizes to the holders of winning tickets;

(3) Select the type and number of public gaming systems or games, to be played in accordance with the provisions of this article;

(4) Contract, if deemed desirable, with the educational broadcasting authority to provide services through its microwave interconnection system to make available to public broadcasting stations servicing this state and, at no charge, for rebroadcast to commercial broadcasting stations within this state, any public gaming system or games drawing;

(5) Enter into interstate and international lottery agreements with other states or foreign countries, or any combination of one or more states and one or more foreign countries;

(6) Adopt an official seal;

(7) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided;

(8) Prescribe a schedule of fees and charges;

(9) Sue and be sued;
(10) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights of any property, real or personal, consistent with the objectives of the commission as set forth in this article;

(11) Designate one of the deputy directors to serve as acting director during the absence of the director;

(12) Hold hearings on any matter of concern to the commission relating to the lottery, subpoena witnesses, administer oaths, take testimony, require the production of evidence and documentary evidence and designate hearing examiners and employees to so act; and

(13) To make and enter into all agreements and do all acts necessary or incidental to the performance of its duties and the exercise of its powers under this article.

(b) Departments, boards, commissions or other agencies of this state shall provide assistance to the state lottery office upon the request of the director.

(c) Upon the request of the deputy director for the security and licensing division in conjunction with the director, the attorney general, department of public safety and all other law-enforcement agencies shall furnish to the director and the deputy director such information as may tend to assure the security, honesty, fairness and integrity in the operation and administration of the lottery as they may have in their possession, including, but not limited to, manual or computerized information and data. The director is to designate such employees of the security and licensing division as may be necessary to act as enforcement agents. Such agents are authorized to investigate complaints made to the commission or the state lottery office concerning possible violation of the provisions of this article and determine whether to recommend criminal prosecution. If it is determined that action is necessary, an agent, after approval of the director, is to make such recommen-
§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

1 (a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the “state lottery fund”. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the “state lottery fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That for the period beginning the first day of January, two thousand two, through the thirtieth day of June, two thousand three, not more than seventeen percent of the
gross amount received from each lottery shall be allocated to
and may be disbursed as necessary for fund operation and
administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the ten-year bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section three, article one, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No
transfer to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority and the state building commission which are secured by lottery proceeds. No additional transfer may be made to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the school building authority and the state building commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery education fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and may not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month through the twentieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d,
chapter eighteen of this code, as a first priority from the net
profits of the lottery for the preceding month, an amount equal
to one tenth of the projected annual principal, interest and
coverage ratio requirements on any and all revenue bonds and
refunding bonds issued, or to be issued, on or after the first day
of April, one thousand nine hundred ninety-four, as certified to
the lottery director in accordance with the provisions of section
six, article nine-d, chapter eighteen of this code. In no event
shall the monthly amount allocated exceed one million eight
hundred thousand dollars, nor may the total allocation of the net
profits to be paid into the school building debt service fund, as
provided in this section, in any fiscal year exceed the lesser of
the principal and interest requirements certified to the lottery
director or eighteen million dollars. In the event there are
insufficient funds available in any month to transfer the amount
required to be transferred pursuant to this subsection to the
school debt service fund, the deficiency shall be added to the
amount transferred in the next succeeding month in which
revenues are available to transfer the deficiency. A lien on the
proceeds of the state lottery fund up to a maximum amount
equal to the projected annual principal, interest and coverage
ratio requirements, not to exceed twenty-seven million dollars
annually, may be granted by the school building authority in
favor of the bonds it issues which are secured by the net lottery
profits.

When the school improvement bonds, secured by profits
from the lottery and deposited in the school debt service fund,
mature, the profits shall become available for debt service on
additional school improvement bonds or may at the discretion
of the authority be placed into the school construction fund
created pursuant to the provisions of section six, article nine-d,
chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July,
one thousand nine hundred ninety-six, and continuing on or
before the twenty-eighth day of each succeeding month
thereafter through the twenty-eighth day of June, two thousand
twenty-one, the lottery director shall allocate to the education,
arts, sciences and tourism debt service fund created pursuant to
the provisions of section eleven-a, article six, chapter five of
this code, as a second priority from the net profits of the lottery
for the preceding month, an amount equal to one tenth of the
projected annual principal, interest and coverage ratio require-
ments on any and all revenue bonds and refunding bonds
issued, or to be issued, on or after the first day of April, one
thousand nine hundred ninety-six, as certified to the lottery
director in accordance with the provisions of that section. In no
event may the monthly amount allocated exceed one million
dollars nor may the total allocation paid into the education, arts,
sciences and tourism debt service fund, as provided in this
section, in any fiscal year exceed the lesser of the principal and
interest requirements certified to the lottery director or ten
million dollars. In the event there are insufficient funds
available in any month to transfer the amount required pursuant
to this subsection to the education, arts, sciences and tourism
debt service fund, the deficiency shall be added to the amount
transferred in the next succeeding month in which revenues are
available to transfer the deficiency. A second-in-priority lien on
the proceeds of the state lottery fund up to a maximum amount
equal to the projected annual principal, interest and coverage
ratio requirements, not to exceed fifteen million dollars
annually, may be granted by the state building commission in
favor of the bonds it issues which are secured by the net lottery
profits.

(j) There is hereby continued a special revenue fund in the
state treasury which shall be designated and known as the
“lottery senior citizens fund.” The fund shall consist of the
amounts allocated pursuant to subsection (f) of this section,
which amounts shall be deposited into the lottery senior citizens
fund by the state treasurer. The lottery senior citizens fund shall
also consist of all interest earned from investment of the lottery senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be distributed in the manner provided below and may not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

§29-22-18a. State excess lottery revenue fund.

(a) There is hereby created a special revenue fund within the state lottery fund in the state treasury which shall be designated and known as the “state excess lottery revenue fund”. The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any
gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under section 29-22B-1408(a)(1) of this chapter, shall be deposited in the state treasury and placed into the “state excess lottery revenue fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and the state treasurer as part of the general revenue of the state.

(b) For the fiscal year beginning the first day of July, two thousand one, the moneys of the fund established in this section shall be used for the purpose of subsidizing salary increases and associated employee benefits paid from the state general revenue fund as determined by the secretary of administration effective the first day of July, two thousand one or thereafter, including, but not limited to, the salary increase for teachers provided in section two, article four, chapter eighteen-a of this code, by enactment of the Legislature in two thousand one; the salary increase for members of the state police provided in section five, article two, chapter fifteen of this code by enactment of the Legislature in two thousand one; and general salary increases for state employees: Provided, That effective the first day of October, two thousand one, the full year salary increases for state employees other than correctional officers and members of the state police equal seven hundred fifty-six dollars for each full-time employee: Provided, however, That effective the first day of July, two thousand one, the full year salary increases for uniformed correctional officers equal two thousand dollars for each full-time employee; and that the full year salary increases for non-uniformed correctional staff, whose core duties include contact with inmates or juvenile detainees on a regular and frequent basis, equal one thousand two hundred fifty dollars for each full-time employee; but that for all other division of correction and division of juvenile services employ-
ees, the full year salary increase equals seven hundred fifty-six dollars for each full-time employee. Until the thirtieth day of June, two thousand two, the lottery commission shall, upon direction from the governor, transfer the moneys of the account to the state general revenue fund in the amounts specified in the governor’s official revenue estimates to subsidize the funding of the salary increases described in this subsection. Beginning the first day of July, two thousand two, and thereafter, the transfer authority granted by this subsection is terminated. After first satisfying the funding requirements directed by this subsection, the moneys remaining in the fund shall be disbursed in the manner provided by subsection (c) of this section.

(c) For the fiscal year beginning the first day of July, two thousand one, the commission shall deposit: (1) Five million five hundred thousand dollars into the account hereby created in the state treasury to be known as the “education improvement fund” for appropriation by the Legislature to the “promise scholarship fund” created in section seven, article seven, chapter eighteen-c of this code; (2) twenty-five million dollars to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (3) twenty-five million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (4) ten million dollars into a separate account within the state lottery fund to be known as the higher education improvement fund for higher education; and (5) nine million dollars into a separate account within the state lottery fund to be known as the state park improvement fund for park improvements. For the fiscal year beginning the first day of July, two thousand two, the commission shall deposit: (1) Sixty-five million dollars into the subaccount of the state excess lottery revenue fund hereby created in the state treasury to be known as the “general purpose account” to be expended pursuant to appropriation of the Legislature; (2) ten
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76 million dollars into the education improvement fund for
77 appropriation by the Legislature to the “promise scholarship
78 fund” created in section seven, article seven, chapter eighteen-c
79 of this code; (3) twenty-five million dollars to the school
80 building debt service fund created in section six, article nine-d,
81 chapter eighteen of this code for the issuance of revenue bonds;
82 (4) fifty million dollars in the West Virginia infrastructure fund
83 created in section nine, article fifteen-a, chapter thirty-one of
84 this code to be spent in accordance with the provisions of that
85 article; (5) ten million dollars into the higher education im-
86 provement fund for higher education; and (6) nine million
87 dollars into the state park improvement fund for park improve-
88 ments. For the fiscal year beginning the first day of July, two
89 thousand three, the commission shall deposit: (1) Sixty-five
90 million dollars into the general purpose account to be expended
91 pursuant to appropriation of the Legislature; (2) seventeen
92 million dollars into the education improvement fund for
93 appropriation by the Legislature to the “promise scholarship
94 fund” created in section seven, article seven, chapter eighteen-c
95 of this code; (3) twenty-five million dollars to the school
96 building debt service fund created in section six, article nine-d,
97 chapter eighteen of this code for the issuance of revenue bonds;
98 (4) fifty million dollars in the West Virginia infrastructure fund
99 created in section nine, article fifteen-a, chapter thirty-one of
100 this code to be spent in accordance with the provisions of that
101 article; (5) ten million dollars into the higher education im-
102 provement fund for higher education; and (6) nine million
103 dollars into the state park improvement fund for park improve-
104 ments. For the fiscal year beginning the first day of July, two
105 thousand four, and subsequent fiscal years, the commission
106 shall deposit: (1) Sixty-five million dollars into the general
107 purpose account to be expended pursuant to appropriation of the
108 Legislature; (2) twenty-seven million dollars into the education
109 improvement fund for appropriation by the Legislature to the
110 “promise scholarship fund” created in section seven, article
111 seven, chapter eighteen-c of this code; (3) twenty-five million
dollar to the school building debt service fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds; (4) fifty million dollars in the West Virginia infrastructure fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of that article; (5) ten million dollars into the higher education improvement fund for higher education; and (6) nine million dollars into the state park improvement fund for park improvements.

(d) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsection (c) of this section, the commission shall, after providing for the distribution to the education improvement fund for appropriation by the Legislature to the promise scholarship fund, distribute the revenue on a pro rata basis.

(e) For the fiscal year beginning on the first day of July, two thousand two, and each fiscal year thereafter, the commission shall, after meeting the requirements of subsections (c) and (h) of this section, deposit fifty percent of the amount by which annual gross revenue deposited in the state excess lottery revenue fund exceeds two hundred twenty-five million dollars in a fiscal year in a separate account in the state lottery fund to be available for appropriation by the Legislature.

(f) When bonds are issued for the infrastructure, higher education or park improvement purposes described in this section that are secured by profits from lotteries deposited in the state excess lottery revenue fund, the lottery director shall allocate to the debt service fund created for that purpose, as a third priority from the net profits of the lottery under this section and section eighteen of this article for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued, on or after the first day
of April, two thousand two, as certified to the lottery director in accordance with legislation authorizing issuance of the bonds. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A third-in-priority lien on the proceeds of the state lottery fund and the state excess lottery revenue fund up to a maximum amount equal to the projected annual principle, interest and coverage ratio requirements, not to exceed an annual amount specified in legislation authorizing issuance of the bonds, may be granted by the state in favor of the bonds it issues which are secured by net lottery profits and state excess lottery revenue.

(g) No portion of the distributions made as provided in subsection (c) of this section may be used to pay debt service on bonded indebtedness until after the Legislature expressly authorizes issuance of the bonds and payment of debt service on the bonds through statutory enactment or the passage of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under subsection (c) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(h) In fiscal year two thousand four, and thereafter, prior to the distributions provided in subsection (c) of this section, the lottery commission shall deposit into the general revenue fund amounts necessary to provide reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.
(i)(1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the public employees insurance agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matters areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(j) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost effective program possible for the senior citizens of this state; and by working closely with the state’s congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his progress back to the joint committee on government and finance on an annual basis beginning in November of the year two thousand one, until a comprehensive program has been fully implemented.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.
§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

§29-22A-10b. Distribution of excess net terminal income.

§29-22A-10c. Surcharge; capital reinvestment fund.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

1 (a) Video lottery terminals licensed for placement in this state shall meet the following hardware specifications:

3 (1) Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

5 (2) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.
(3) An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

(4) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one or more of the following: One dollar bills, five dollar bills, ten dollar bills and twenty dollar bills. All coin and bill acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

(6) Access to the interior of video lottery terminal shall be controlled through a series of locks and seals.

(7) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal’s graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of
the ticket data as approved by the commission. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game, there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. A video lottery terminal may allow up to five dollars to be wagered on a single game. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior approval of the commission.
(13) Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission’s central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:

(1) Chi-square test. Each symbol or number shall satisfy the ninety-nine percent confidence limit using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

(2) Runs test. Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the “runs test” for the existence of recurring patterns within a set of data.

(3) Correlation test. Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

(4) Serial correlation test. Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether
(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval shall be obtained prior to applying for testing of the high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:
(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;

(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;

(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which would allow the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall directly or through a contract with a third party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery termi-
nals, utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate, any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer’s permit, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in
administering racetrack video lottery at the licensed racetrack, and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: *Provided, That* any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the state lottery fund. For all fiscal years beginning on or after the first day of July, two thousand one, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. The licensed racetrack’s share is in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the state lottery fund as provided in section ten-a of this article.

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition
to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and
(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and
The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code:

Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the “John F. ‘Jack’ Bennett Fund.” The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: Provided, however, That five hundred thousand dollars of the one percent
of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex: Provided further, That the remainder of the one percent of net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack’s failure to maintain this balance, the commission may disable all of a licensed racetrack’s video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission’s central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee’s video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.
(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed
racetrack’s possession, under its control or in which it has an
interest and the licensed racetrack shall authorize all third
parties in possession or in control of the accounts or records to
allow examination of any of those accounts or records by the
commission.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after the first day of July,
two thousand one, any amount of net terminal income generated
annually by a licensed racetrack in excess of the amount of net
terminal income generated by that licensed racetrack during the
fiscal year ending on the thirtieth day of June, two thousand
one, shall be divided as follows:

1 (1) The commission shall receive forty-one percent of net
terminal income, which the commission shall deposit in the
state excess lottery revenue fund created in section eighteen-a,
article twenty-two of this chapter;

2 (2) Eight percent of net terminal income at a licensed
racetrack shall be deposited in the special fund established by
the licensee, and used for payment of regular purses in addition
to other amounts provided for in article twenty-three, chapter
nineteen of this code;

3 (3) The county where the video lottery terminals are located
shall receive two percent of the net terminal income: Provided,
That:

4 (A) Any amount by which the total amount under this
section and subdivision three, subsection (c), section ten of this
article is in excess of the two percent received during fiscal year
one thousand nine hundred ninety-nine by a county in which a
racetrack is located that has participated in the West Virginia
thoroughbred development fund since on or before the first day
of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, the fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population;

(B) Any amount by which the total amount under this section and subdivision three, subsection c, section ten of this article is in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment
into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: *Provided,* That for any racetrack which does not have a breeder’s program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia racing commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-two percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) One percent of the net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and cultural facilities and capitol resources matching grant program fund created under section three, article one of this chapter.
(b) The commission may establish orderly and effective procedures for the collection and distribution of funds under this section in accordance with the provisions of this section and section ten of this article.

§29-22A-10c. Surcharge; capital reinvestment fund.

(a) For all fiscal years beginning on or after the first day of July, two thousand one, there shall be imposed a surcharge of ten percent against the excess of total net terminal income generated from a licensed racetrack for that fiscal year over total net terminal income from that licensed racetrack for the fiscal year ending the thirtieth day of June, two thousand one.

(b) A capital reinvestment fund is hereby created within the lottery fund. Forty-two percent of the surcharge amount attributable to each racetrack shall be retained by the commission and deposited into a separate capital reinvestment account for that licensed racetrack. For each dollar expended by a licensed racetrack for capital improvements at the racetrack and adjacent facilities owned by the licensee having a useful life of fifteen or more years and placed in service after the first day of April, two thousand one, the licensed racetrack shall receive one dollar in recoupment from its capital reinvestment fund account: Provided, That in the case of thoroughbred horse tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the barn area or other areas at the track approved by the horsemen’s benevolent and protective association acting on behalf of the horsemen: Provided, however, That in the case of greyhound race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the kennel area or other areas at the track approved by the racing commission. If a licensed racetrack’s unrecouped capital improvements exceed its capital reinvestment fund account at the end of any fiscal
year, the excess improvements may be carried forward to three subsequent fiscal years.

(c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetrack’s capital reinvestment fund account at the end of any fiscal year shall be deposited in the state excess lottery revenue fund created in section eighteen-a, article twenty-two of this chapter.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-102. Authorizing for limited video lottery; regulation by lottery commission.
§29-22B-103. Exceptions.
§29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.
§29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.
§29-22B-203. Legislative finding; license to participate in limited video lottery is a privilege.
§29-22B-301. Application of definitions.
§29-22B-302. Applicant defined.
§29-22B-303. Associated equipment defined.
§29-22B-304. Background investigation defined.
§29-22B-305. Central computer, central control computer or central site system defined.
§29-22B-306. Commission or state lottery commission defined.
§29-22B-308. Director defined.
§29-22B-309. Disable or terminal disable defined.
§29-22B-310. Display defined.
§29-22B-311. EPROM and erasable programmable read-only memory chips defined.
§29-22B-312. Identification document defined.
§29-22B-313. Indirect ownership defined.
§29-22B-314. License defined.
§29-22B-315. Location defined.
§29-22B-316. Limited video lottery retailer defined.
§29-22B-317. Lottery defined.
§29-22B-318. Manufacturer defined.
§29-22B-319. National criminal history background check system defined.
§29-22B-322. Own defined.
§29-22B-323. Permit defined.
§29-22B-324. Permittee defined.
§29-22B-325. Person defined.
§29-22B-326. Player defined.
§29-22B-327. Resident of this state defined.
§29-22B-328. Restricted access adult-only facility defined.
§29-22B-329. Service technician defined.
§29-22B-330. Video lottery defined.
§29-22B-331. Video gambling machine defined.
§29-22B-332. Video lottery game defined.
§29-22B-333. Video lottery terminal defined.
§29-22B-334. Wager defined.
§29-22B-401. General authority of state lottery commission and director; conflicts.
§29-22B-402. Powers and duties of the state lottery commission.
§29-22B-403. Powers and duties of the director.
§29-22B-404. Advertising by commission or director prohibited.
§29-22B-501. Types of licenses issued for participation in limited video lottery activities.
§29-22B-502. General qualifications for all types of limited video lottery licenses.
§29-22B-503. Additional qualifications for an applicant for an operator’s license.
§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer’s license.
§29-22B-505. Additional qualifications for an applicant for a service technician’s license.
§29-22B-506. Additional qualifications for an applicant for a manufacturer’s license.
§29-22B-507. Persons having control of an applicant for a limited video lottery license.
§29-22B-508. Commission action on applications.
§29-22B-509. Incomplete application not to be considered.
§29-22B-511. Issuance of order refusing to issue or renew license, or suspending or revoking same.
§29-22B-513. Application forms and other documents.
§29-22B-514. Failure to reveal material fact; false or misleading material.
§29-22B-515. Bonding requirements for operators and limited video lottery retailers who are permittees.
§29-22B-516. Applicant bears the risk of adverse publicity.
§29-22B-517. Renewal of license.
§29-22B-518. Annual license fees.
§29-22B-601. Establishment of procedures for background investigations.
§29-22B-603. Guidelines for background investigations.
§29-22B-604. Applicant's right regarding background investigations.
§29-22B-701. General duties of all licensees.
§29-22B-702. Additional duties of limited video lottery retailers.
§29-22B-703. Additional duties of limited video lottery retailers who are permittees.
§29-22B-704. Duties of limited video lottery retailer regarding payment of credits.
§29-22B-705. Additional duties of manufacturers.
§29-22B-706. Additional duties of operators.
§29-22B-707. Additional duties of service technicians.
§29-22B-801. Manufacturer seeking approval of terminal must be licensed; prohibition against placement of unapproved terminal.
§29-22B-802. Testing of video lottery terminals and associated equipment.
§29-22B-803. Reporting of testing results.
§29-22B-901. Hardware specifications.
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§29-22B-1901. Effect of this article on certain taxes.
§29-22B-1902. Preemption of state laws or local regulation.
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PART 1. GENERAL PROVISIONS.


1 This article shall be known and may be cited as the “Limited Video Lottery Act”.


1 Limited video lottery is hereby authorized and may be operated and maintained subject to the provisions of this article.
2 The limited video lottery authorized by this article, being a lottery, is subject to regulation by the West Virginia lottery commission.

§29-22B-103. Exceptions.
(a) Nothing in this article shall be construed in any way to modify, amend, or otherwise affect the validity of any provisions regulating charitable bingo and raffles as set forth in articles 47-20-1, et seq., and 47-21-1, et seq., of this code.

(b) Nothing contained in this article shall be construed to modify, amend, or otherwise affect the validity of any provisions regulating racetrack video lottery as set forth in article 22A of this chapter.

PART 2. LEGISLATIVE FINDINGS.

§29-22B-201. Legislative finding; constitutional authority; limited video lottery is a lottery.

The Legislature finds and declares that:

(1) The constitution grants to the Legislature the authority to establish, by general law, lotteries which are regulated, controlled, owned and operated by the state of West Virginia; and

(2) The limited video lottery authorized by this article is a "lottery" as that term is commonly understood and as that term is used in the West Virginia constitution, article 6, section 36.

The limited video lottery authorized as video lottery games in this article is a system of lottery games that utilize advanced computer technology.

§29-22B-202. Legislative finding; state ownership of video lottery through outright ownership or possession of a proprietary interest in computer hardware and software.

The Legislature further finds and declares that:

(1) The state can control, own and operate a video lottery by possessing a proprietary interest in the main logic boards, all erasable, programmable read-only memory chips used in any
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5 video lottery equipment or games, and software consisting of
6 computer programs, documentation and other related materials
7 necessary for the video lottery system to be operated;

8 (2) The state may possess a proprietary interest in video
9 lottery game software, for purposes of this article, through
outright ownership or through an exclusive product license
agreement with a manufacturer whereby (A) the manufacturer
retains copyrighted ownership of the software, (B) the product
license granted to the state is nontransferable, and (C) the
agreement authorizes the state to run the software program,
solely for its own use, on the state's central equipment unit and
electronic video terminals networked to the central equipment
unit; and

18 (3) The state can control and regulate a video lottery if the
state (A) restricts licensure to a limited number of video lottery
terminals at qualified locations, (B) extends strict and exclusive
state regulation to all persons, locations, practices and associa-
tions related to the operation of licensed limited video lottery
facilities, and (C) provides comprehensive law-enforcement
supervision of limited video lottery activities.

§29-22B-203. Legislative finding; license to participate in limited
video lottery is a privilege.

1 The Legislature further finds and declares that:

2 (1) A person seeking a license or other affirmative lottery
3 commission approval has no right to a license or to the granting
4 of the approval sought. Any license issued or other commission
5 approval granted pursuant to the provisions of this article is a
6 revocable privilege;

7 (2) The licensing, control and regulation of limited video
lottery by the state does not create (A) any property right in a
license issued pursuant to this article, (B) any right to transfer
or encumber a license, (C) any vested right in a license, or (D)
the accrual of any value to the privilege of participation in any limited video lottery activity; and

(3) That the privilege of participation in limited video lottery operations is conditioned upon (A) the proper and continuing individual qualification of an applicant or licensee, and (B) the discharge of the affirmative responsibility of each licensee to provide the regulatory and investigatory authorities with any assistance and information necessary to assure that the policies declared by this article are achieved.

PART 3. DEFINITIONS.

§29-22B-301. Applicability of definitions.

For the purposes of this article, the words or terms defined in this part 3, and any variation of those words or terms required by the context, have the meanings ascribed to them in this part 3. These definitions are applicable unless a different meaning clearly appears from the context.

§29-22B-302. Applicant defined.

“Applicant” means a person applying for a license required by this article for lawful participation in limited video lottery.

§29-22B-303. Associated equipment defined.

“Associated equipment” means any hardware located on the premises of video lottery retailers, other than the video lottery terminals themselves, that is connected to the video lottery terminal or to the central computer for the purpose of performing communication, validation or other functions. “Associated equipment” does not include the communication equipment and facilities of a regulated public utility.

§29-22B-304. Background investigation defined.

“Background investigation” means a security, criminal and credit investigation of an applicant who has applied for the
issuance or renewal of a license pursuant to this article, or a licensee who holds a current license.

§29-22B-305. Central computer, central control computer or central site system defined.

“Central computer,” “central control computer” or “central site system” means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

§29-22B-306. Commission or state lottery commission defined.

“Commission” or “state lottery commission” means the West Virginia lottery commission created by article 22 of this chapter.


“Control” means the authority to direct the management and policies of an applicant or a license holder.

§29-22B-308. Director defined.

“Director” means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

§29-22B-309. Disable or terminal disable defined.

“Disable” or “terminal disable” means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

§29-22B-310. Display defined.

“Display” means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.
§29-22B-311. EPROM and erasable programmable read-only memory chips defined.

“EPROM” and “erasable programmable read-only memory chips” means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the state of West Virginia.

§29-22B-312. Identification document defined.

“Identification document” means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government or a political subdivision of a foreign government, which, when completed with information concerning a particular individual, is of the type intended or commonly accepted for the purpose of identifying individuals.

§29-22B-313. Indirect ownership defined.

“Indirect ownership” means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. “Indirect ownership” shall be determined under the same rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes.

§29-22B-314. License defined.

“License” or “video lottery license” means authorization granted by the commission pursuant to this article to a person permitting that person to engage in the activity for which the license was issued. “License used in this article” means a license issued by the commission as provided in this article that
§29-22B-315. Location defined.

"Location" means a restricted access adult-only facility located on premises in which the limited video lottery retailer holds a license as provided in section 22B-501 of this article.

§29-22B-316. Limited video lottery retailer defined.

"Limited video lottery retailer" means a person who holds either a valid license issued under article 60-7-1, et seq., of this code, to operate a private club, or who holds a valid Class A license issued under article 11-16-1, et seq., of this code, to operate a business where nonintoxicating beer is sold for consumption on the premises, or who holds both licenses, and the person also holds a valid limited video lottery retailer’s license issued under this article.

§29-22B-317. Lottery defined.

"Lottery" means the public gaming systems or games regulated, controlled, owned and operated by the state lottery commission as provided in this article and in articles 29-22-1, et seq., 29-22A-1, et seq., and article 29-25-1, et seq.

§29-22B-318. Manufacturer defined.

"Manufacturer" means any person holding a license issued under this article by the commission which allows the person to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which the video lottery terminal is housed, and whose product is intended for sale, lease or other assignment to
a person who is issued a permit under this article allowing the
person to purchase or lease video lottery terminals from a
manufacturer.

§29-22B-319. National criminal history background check system
defined.

"National criminal history background check system”
means the criminal history record system maintained by the
Federal Bureau of Investigation based on fingerprint identifica-
tion or any other method of positive identification.

§29-22B-320. Net terminal income and gross terminal income
defined.

"Net terminal income” means the portion of gross terminal
income collected by the commission from the permittees
determined to be net terminal income as calculated under
subsection 22B-1408(a) of this article. “Gross terminal income”
means the total amount of cash inserted into video lottery
terminals operated by a licensee, minus the total value of game
credits which are cleared from the video lottery terminals in
exchange for winning redemption tickets. A licensee may not
deduct costs or expenses related to the operation of video
lottery games from net terminal income.


"Operator” means a person holding an operator’s license
granted under this article by the commission allowing the
person to: (1) Own or lease a specified number of video lottery
terminals from one or more manufacturers; (2) service and
repair those video lottery terminals; and (3) enter into contracts
with limited video lottery retailers for placement of those video
lottery terminals in a restricted access adult-only facility located
on the premises of the limited video lottery retailers.
§29-22B-322. Own defined.

“Own” means any beneficial or proprietary interest in any property and includes, but is not limited to, any direct or indirect beneficial or proprietary interest in any business of an applicant or licensee.

§29-22B-323. Permit defined.

“Permit” means the authorization issued by the commission allowing a person licensed as a permittee under this article to own or lease a specified number of video lottery terminals.

§29-22B-324. Permittee defined.

“Permittee” means a licensed operator or a licensed limited video lottery retailer who has a permit for video lottery terminals issued under part 11 of this article.

§29-22B-325. Person defined.

“Person” means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

§29-22B-326. Player defined.

“Player” means a person who plays a video lottery game on a video lottery terminal at a restricted access adult-only facility.

§29-22B-327. Resident of this state defined.

“Resident of this state” means an individual who: (1) maintains a bona fide full time primary place of abode in this state; (2) is not registered to vote in any other state; (3) if licensed to drive, holds a valid driver’s license in this state and does not hold a current driver’s license issued by any other
state; (4) timely filed personal income tax returns as a resident of this state for the four preceding calendar years (determined by including any authorized extension of time for filing the return); and (5) does not claim to be a resident of any other state for any purpose whatsoever.

§29-22B-328. Restricted access adult-only facility defined.

"Restricted access adult-only facility" means:

(a)(1) A private club licensed under article 60-7-1, et seq., of this code that is licensed under this article by the commission to allow its members and their guests to play video lottery games: Provided, That when the private club is frequented by minors and their parents, video lottery terminals shall be located in a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room; and

(2) A place of business that: (A) Has a “Class A” license issued under article 11-16-1, et seq., of this code to sell nonintoxicating beer for consumption on the premises; (B) derives at least forty percent of its annual gross receipts at that location from sales of nonintoxicating beer to consumers and of such sales, at least eighty percent are sales of nonintoxicating beer for consumption on the premises; (C) maintains a suitable kitchen and dining facility and related equipment for serving meals for on-premises consumption; (D) regularly prepares and sells meals for consumption on the premises; (E) has a separate room suitable for the location of video lottery terminals with adult-only restricted access, the interior of which is not visible to persons outside the room; and (F) after meeting any additional standards developed by the commission to implement and apply this subdivision (2), is licensed under this article by the commission to allow video lottery games to be played in the restricted access adult-only separate room on the premises.
(b) Notwithstanding the provisions of subsection (a) of this section, it does not include a place of business that sells petroleum products in conjunction with the sale of other retail products which may include, but are not limited to, tobacco, alcohol or food products; nor may such place of business establish a separate room or building which is a part of, contiguous to, or adjoining the place of business as a restricted access adult-only facility.

§29-22B-329. Service technician defined.

“Service technician” means an individual who is licensed under this article to service, maintain and repair video lottery terminals that are registered under this article. A licensed service technician may be a sole proprietor, partner, or an employee of a person licensed under this article or an employee of a business not licensed under this article that services, maintains and repairs video lottery terminals owned or leased by a permittee through one or more service technicians.

§29-22B-330. Video lottery defined.

“Video lottery” means a lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for a cash or noncash prize, or nothing, determined wholly or predominantly by chance. “Video lottery” does not include a lottery game that merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game and which does not utilize an interactive electronic terminal device allowing input by one or more players.
§29-22B-331. Video gambling machine defined.

(a) "Video gambling machine" means a computerized device:

(1) That is not approved and registered by the commission under the provisions of this article or used, possessed or operated pursuant to and under the requirements of the provisions of articles 29-22-1, et seq., 29-22A-1, et seq., 29-25-1, et seq., 47-20-1, et seq., or 47-21-1, et seq., or any reenactment thereof;

(2) That employs a monitor that has a display screen, software programs, graphics board, graphics card or any other necessary components that give the monitor graphics capabilities for displaying and manipulating pictures, words, numbers or symbols;

(3) That has a storage medium containing the source language or executable code of a computer program that cannot be reasonably demonstrated to have any use other than, through the display of pictures, words, numbers or symbols, simulating the play of such games as poker, blackjack, roulette, baccarat, keno, craps, or any other game of skill or chance of whatever name or kind;

(4) That allows a person, by inserting currency, coins, tokens or other similar objects into the machine, or by otherwise making some payment of consideration, to make the machine available for the person to play;

(5) That allows a person playing the machine an opportunity to win (A) cash, (B) play credits, (C) tokens, tickets, vouchers or other things that can be exchanged for cash or any other thing of value, or (D) prizes, premiums, merchandise or any other thing of value, whether by reason of the skill of the
30 player or by the application of the element of chance, or both; 
31 and 

32 (6) That can result in a payoff to a winning player automatically 
33 from the machine or in any other manner whatsoever. 

34 (b) “Video gambling machine” does not include: 

35 (1) Pin ball machines; 

36 (2) Automatic weighing, measuring, musical, and vending 
37 machines which are designed and constructed to give a uniform 
38 and fair return in value for each coin deposited and in which 
39 there is no element of chance; or 

40 (3) Crane machines. 

41 (c) A machine described in subsection (a) of this section is 
42 no less a video gambling machine because it is not in working 
43 order or because some mechanical act of manipulation or repair 
44 is required to accomplish its adaptation, conversion or 
45 workability. 

§29-22B-332. Video lottery game defined. 

1 “Video lottery game” means an electronically simulated 
2 game of chance that is approved, owned and controlled under 
3 this article by the commission, which is displayed on the screen 
4 or video monitor of a video lottery terminal and that: 

5 (1) Is connected to the commission’s central control 
6 computer by an on-line or dial-up communication system; 

7 (2) Is initiated by a player’s insertion of coins or currency 
8 into a video lottery terminal, which causes game play credits to 
9 be displayed on the video lottery terminal and, with respect to 
10 which, each game play credit entitles a player to choose one or
more symbols or numbers or to cause the video lottery terminal
to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits
based upon game rules which establish the random selection of
winning combinations of symbols or numbers or both and the
number of free-play credits to be awarded for each winning
combination of symbols or numbers or both;

(4) Is based upon computer-generated random selection of
winning combinations based totally or predominantly on
chance;

(5) In the case of a video lottery game which allows the
player an option to select replacement symbols or numbers or
additional symbols or numbers after the game is initiated and in
the course of play, either: (A) Signals the player, prior to any
optional selection by the player of randomly generated replace-
ment symbols or numbers, as to which symbols or numbers
should be retained by the player to present the best chance,
based upon probabilities, that the player may select a winning
combination; (B) signals the player, prior to any optional
selection by the player of randomly generated additional
symbols or numbers, as to whether the additional selection
presents the best chance, based upon probabilities, that the
player may select a winning combination; or (C) randomly
generates additional or replacement symbols and numbers for
the player after automatically selecting the symbols and
numbers which should be retained to present the best chance,
based upon probabilities, for a winning combination, so that in
any event, the player is not permitted to benefit from any
personal skill, based upon a knowledge of probabilities, before
deciding which optional numbers or symbols to choose in the
course of video lottery game play;
(6) Allows a player at any time to simultaneously clear all
game play credits and print a redemption ticket entitling the
player to receive the cash value of the free plays cleared from
the video lottery terminal; and

(7) Does not use game themes of roulette, dice or baccarat
card games commonly associated with casino gambling:
Provided, That games having a video display depicting symbols
that appear to roll on drums to simulate a classic casino slot
machine, game themes of other card games and keno may be
used.

§29-22B-333. Video lottery terminal defined.

"Video lottery terminal" means a commission-approved
machine or device that is compatible with the lottery commis-
sion's central computer system, and that is used for the purpose
of playing video lottery games authorized by the lottery
commission by no more than one player at a time.

§29-22B-334. Wager defined.

"Wager" means a sum of money or thing of value risked on
an uncertain occurrence.

PART 4. ADMINISTRATION OF LIMITED VIDEO LOTTERY.

§29-22B-401. General authority of state lottery commission and
director; conflicts.

(a) The lottery commission created by section 29-22-4 of
this code is authorized to implement and operate a system of
limited video lottery in accordance with the provisions of this
article and the applicable provisions of article 22 of this
chapter.
(b) The state lottery commission and the director of the commission shall exercise their respective powers and perform their respective duties and functions as specified in this article.

(c) The provisions of article 22 of this chapter apply to this article, except in the event of conflict or inconsistency between any of the provisions of this article and the provisions of article 22 of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article 22 of this chapter.

§29-22B-402. Powers and duties of the state lottery commission.

In addition to any other powers and duties set forth in this article or article 22 of this chapter, the lottery commission has the following powers and duties:

(1) To propose legislative rules for promulgation by the Legislature in accordance with the provisions of article 29A-3-1, et seq., of this code, governing the licensing, conduct, and operation of limited video lottery that may be necessary to carry out the purposes of this article. The director shall prepare and submit to the lottery commission written recommendations concerning proposed legislative rules for this purpose;

(2) To propose other rules for promulgation as provided in article 29A-3-1, et seq., of this code not inconsistent with this article which the commission in its discretion believes to be necessary. Authority to propose rules includes the authority to propose amendments to rules and to propose repealing rules;

(3) Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the state register by the first day of August, 2001, may be filed as emergency rules.
(4) To conduct hearings upon complaints charging violations of this article or applicable rules, and to conduct other hearings as may be required by this article or rules of the lottery commission;

(5) To enter into written agreements with the state police and local law-enforcement agencies for the conduct of identification and investigation of applicants, licensees or employees in accordance with the provisions of this article, including, but not limited to, (A) performing background investigations and criminal records checks and (B) investigating possible violations that may be discovered as a result of an investigatory process or discovered by the tax commissioner, the alcohol beverage control commissioner or the lottery commission in the course of conducting their respective business. Disclosure to the state police or other law-enforcement officials of a possible violation of this article and material facts related thereto shall not be deemed to be an unauthorized disclosure of information under section 11-10-5d of this code. Nothing in this section prevents or impairs the state police or local law-enforcement agencies from engaging in the activities set forth in this subdivision on their own initiative;

(6) To conduct a continuous study and investigation of limited video lottery throughout the state (A) to ascertain any defects in this article or in legislative rules that may conflict with the purposes of this article, (B) to discover any abuses in the administration, control and oversight of limited video lottery or (C) to discover any violation of this article or applicable legislative rules;

(7) To formulate and recommend proposed legislation amending this article or any applicable legislative rule so as to increase the efficiency and effectiveness of this article;
(8) To report immediately to the governor, the speaker of the House of Delegates, the president of the Senate, the minority leaders of both houses, and such other state officers as the lottery commission deems appropriate concerning any laws which it determines may require immediate amendment to prevent abuses and violations of this article or any applicable rule or to remedy undesirable conditions in connection with the administration or the operation of limited video lottery;

(9) To require such special reports from the director as it considers necessary;

(10) To issue licenses to those involved in the ownership, participation, or conduct of limited video lottery;

(11) To delegate to the director the authority to issue or deny licenses and renewals under criteria established by the commission;

(12) Upon complaint, or upon its own motion, to levy civil penalties and to suspend or revoke licenses that the lottery commission has issued for failure to comply with any applicable provision of this article or rule of the commission;

(13) To establish and collect fees upon persons, licenses, and gaming devices used in, or participating in, limited video lottery as provided in this article or rule of the commission;

(14) To obtain all information from licensees and other persons and agencies which the lottery commission deems necessary or desirable in the conduct of its business;

(15) To issue subpoenas for the appearance or production of persons, records, and things in connection with applications before the lottery commission or in connection with disciplinary or contested cases considered by the lottery commission;
(16) To apply for injunctive or declaratory relief to enforce the provisions of this article and any rules promulgated pursuant to this article;

(17) To impose and collect civil penalties as provided for under this article;

(18) To inspect and examine without notice all premises wherein limited video lottery is conducted or devices or equipment used in limited video lottery are located, manufactured, sold, or distributed, and to summarily seize, remove, and impound, without notice or hearing from such premises any equipment, devices, supplies, books, or records for the purpose of examination or inspection;

(19) To exercise other incidental powers as may be necessary to ensure the safe and orderly regulation of limited gaming and the secure collection of all revenues, including, but not limited to, taxes, fees, civil penalties and other moneys due the commission;

(20) To establish internal control procedures for licensees, including accounting procedures, reporting procedures, and personnel policies;

(21) To establish and collect fees for performing background checks on all applicants for licenses and on all persons with whom the commission may agree with or contract with for the providing of goods or services, as the commission deems appropriate;

(22) To establish and collect fees for performing, or having performed, tests on equipment and devices to be used in limited video lottery;

(23) To demand, at any time when business is being conducted, access to and inspection, examination, photocoopy-
ing, and auditing of all papers, books, and records of applicants
and licensees, on their premises or elsewhere as practicable by
authorized employees or agents of the commission and in the
presence of the licensee or his or her agent, pertaining to the
gross income produced by any licensed gaming establishment
and to require verification of income, and all other matters
affecting the enforcement of the policies of the lottery commis-
sion or any provision of this article; and to impound or remove
all papers, books, and records of applicants and licensees,
without hearing, for inspection or examination; and

(24) To prescribe voluntary alternative methods for the
making, filing, signing, subscribing, verifying, transmitting,
receiving, or storing of returns, writings or other documents.

§29-22B-403. Powers and duties of the director.

In addition to the duties imposed upon the director else-
where in this article and article 22 of this chapter, the director
shall:

(1) Supervise and administer the operation of licensed
limited video lottery in accordance with the provisions of this
article and the rules of the lottery commission;

(2) Issue licenses to manufacturers, operators, limited video
lottery retailers and service technicians, after approval by the
lottery commission;

(3) Register video lottery terminals and equipment and
issue registration decals;

(4) Collect and deposit license and registration fees due
under this article;
(5) Require the mandatory posting by limited video lottery retailers of the rules of play and the odds or house percentage on each video lottery game;

(6) Attend meetings of the lottery commission or appoint a designee to attend in the director's place;

(7) Employ and direct such personnel as may be necessary to carry out the purposes of this article, but no person shall be employed who has been convicted of a felony or gambling-related offense;

(8) With the approval of the lottery commission, enter into agreements with any department, agency, or unit of state government to secure services which the director deems necessary and to provide for the payment for such services;

(9) Employ and compensate such consultants and technical assistants as may be required and as otherwise permitted by law;

(10) Confer with the lottery commission as necessary or desirable, with regard to the operation of the division;

(11) Make available for inspection by the lottery commission or any member of the commission, upon request, all books, records, files, and other information and documents in the director's office;

(12) Advise the lottery commission and recommend to the commission such rules and other procedures as the director deems necessary and advisable to improve the operation of limited video lottery;

(13) With the concurrence of the lottery commission or pursuant to commission requirements and procedures, enter into contracts for materials, equipment, and supplies;
(14) Make a continuous study and investigation of the operation and the administration of similar laws which may be in effect in other states or countries; of any literature on video gaming which from time to time may be published or available; and of any federal laws which may affect the conduct of limited video lottery in this state with a view to recommending or effecting changes that would serve the purposes of this article;

(15) Publish as a public document a monthly report that contains a full and complete statement of the revenue and expenses for each month from limited video lottery operations;

(16) Provide copies of the monthly revenue and expense statement to the lottery commission, the secretary of the department of tax and revenue, the governor, the speaker of the house of delegates, the president of the senate, and the minority leaders of both houses of the Legislature; and

(17) Perform any other acts that the lottery commission finds are necessary or desirable in order to carry out the purposes of this article.

§29-22B-404. Advertising by commission or director prohibited.

Neither the commission nor the director may conduct video lottery advertising or promotional activities to promote or advertise limited video lottery authorized by this article.

PART 5. REQUIREMENTS AND QUALIFICATIONS FOR LICENSURE.

§29-22B-501. Types of licenses issued for participation in limited video lottery activities.

(a) The lottery commission may issue four types of limited video lottery licenses, as follows:

(1) A manufacturer’s license;
(2) An operator's license;

(3) A limited video lottery retailer's license; and

(4) A service technician's license.

(b) A manufacturer's license is required for all persons who act as a manufacturer as defined in section 22B-319 of this article.

(c) An operator's license is required for all persons who engage in the business of placing and operating video gaming machines on the premises of a retailer. A licensed operator and a licensed limited video lottery retailer who hold a permit issued under part 11 of this article may obtain video lottery terminals only from a licensed manufacturer.

(d) A video lottery retailer's license is required for all persons conducting limited video lottery on their premises. Each person licensed as a retailer shall have and maintain sole and exclusive legal possession of the entire premises for which the retail license is issued.

(e) Each license issued pursuant to this section expires one year from the date of its issuance but may be successively renewed upon the filing and approval of an application for renewal, except as otherwise provided in this article.

§29-22B-502. General qualifications for all types of limited video lottery licenses.

No limited video lottery license or license renewal may be granted unless the lottery commission has determined that the applicant satisfies all of the following qualifications:

(1) The applicant is a person of good character, honesty and integrity;
(2) The applicant is a person whose background, criminal record, if any, reputation, habits and associations, do not threaten to (A) compromise the public interest of the citizens of the state, (B) weaken the effective regulation and control of video gaming, (C) breach the security and integrity of the lottery, or (D) introduce corrupt, unfair, or illegal practices, methods and activities into the operation of video gaming or the business or financial transactions incidental to the operation of video gaming;

(3) The applicant has not been convicted of any violation of this article, article 19-23-1, et seq., of this code, articles 22, 22A or 25 of this chapter, or any felony related to theft, bribery, gambling or involving moral turpitude in this or in any other state or foreign country;

(4) The applicant has disclosed to the lottery commission the identity of each person who has control of the applicant, as control is described in section 22B-507, and those persons satisfy all qualifications required by this section and any applicable qualifications required by sections 22B-503 through 22B-506;

(5) The applicant has provided a set of fingerprints and has completed and signed the statement provided for in section 22B-602;

(6) The applicant has furnished all information, including financial data and documents, certifications, consents, waivers, individual history forms and other materials requested by the lottery commission for purposes of determining qualifications for a license.

§29-22B-503. Additional qualifications for an applicant for an operator’s license.
(a) No operator's license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:

(1)(A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four year period immediately preceding the application; or

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application.

(2) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(3) The applicant has secured any necessary financing for the business for which the license application is made, and the financing (A) is from a source that meets the qualifications of this section and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee. A licensee shall request commission approval of any change in financing or leasing arrangements at least thirty days before the effective date of the change;

(4) The applicant has disclosed all financing or refinancing arrangements for the purchase, lease or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the lottery commission;
(5) The applicant has filed with the lottery commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the operator of video lottery terminals, the electronic computer components of the terminals, the random number generators of the terminals, or the cabinets in which they are housed; and

(6) The applicant does not hold any other license under this article, article 19-23-1, *et seq.*, of this code, or articles 22, 22A or 25 of this chapter, except that an applicant may also be licensed as a service technician.

(b) (1) A person or a member of his or her immediate family who has an ownership interest in a business entity that submits an application for an operator’s license may not (A) submit an application for another operator’s license as an individual, (B) serve as an officer, director, member or partner of a business entity that submits an application for another operator’s license, or (C) have an ownership interest in any other business entity that submits an application for an operator’s license.

(2) Business entities that have common owners or common officers, directors, members or partners may not hold more than one operator’s license.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer’s license.

No limited video lottery retailer’s license or license renewal may be granted unless the lottery commission has determined that, in addition to the general requirements set forth in section 22B-502, the applicant satisfies all of the following qualifications:
6 (A) If the applicant is an individual, the applicant has been a citizen of the United States and a resident of this state for the four year period immediately preceding the application;

(B) If the applicant is a corporation, partnership or other business entity, the chief executive officer and the majority of the officers, directors, members and partners (to the extent each of these groups exists with respect to a particular business organization), both in number and percentage of ownership interest, have been citizens of the United States and residents of this state for the four year period immediately preceding the application;

(2) The applicant has disclosed to the lottery commission the identity of each person who has control of the applicant, as control is described in section 22B-507;

(3) The applicant holds either (A) a valid license issued under article 60-7-1, et seq., of this code to operate a private club, (B) a valid Class A license issued under article 11-16-1, et seq., of this code to operate a business where nonintoxicating beer is sold for consumption on the premises, or (C) both licenses;

(4) The applicant has demonstrated the training, education, business ability and experience necessary to establish, operate and maintain the business for which the license application is made;

(5) The applicant has secured any necessary financing for the business for which the license application is made, and the financing (A) is from a source that meets the qualifications of this section and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee;

(6) The applicant has disclosed all financing or refinancing arrangements for placement on the applicant’s premises of
video lottery terminals and associated equipment in the degree
of detail requested by the lottery commission;

(7) The applicant has filed with the lottery commission a
copy of any current or proposed agreement between the
applicant and a licensed operator for the placement on the
applicant’s premises of video lottery terminals;

(8) The applicant has filed with the lottery commission a
copy of any current or proposed agreement between the
applicant and a licensed operator or other person for the
servicing and maintenance of video lottery terminals by
licensed service technicians; and

(9) The applicant does not hold any other license under this
article, article 19-23-1, et seq., of this code, or articles 22, 22A
or 25 of this chapter, except that an applicant may also be
licensed as a service technician.

§29-22B-505. Additional qualifications for an applicant for a
service technician’s license.

No service technician’s license or license renewal may be
granted unless the lottery commission has determined that, in
addition to the general requirements set forth in section 22B-
502, the applicant has passed a technical competence test
administered or approved by the lottery commission.

§29-22B-506. Additional qualifications for an applicant for a
manufacturer’s license.

No manufacturer’s license or license renewal may be
granted unless the lottery commission has determined that, in
addition to the general requirements set forth in section 22B-
502, the applicant satisfies all of the following qualifications:
(1) The applicant has obtained, or can obtain, certification of compliance under the provisions of part 15 of the federal communications commission rules for all video lottery terminals placed in this state;

(2) The applicant has demonstrated the capacity to manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures set forth in part 9 of this article;

(3) The applicant has demonstrated the ability to maintain and provide an inventory of spare parts so as to assure the timely repair and continuous operation of licensed video lottery terminals placed in this state; and

(4) The applicant has demonstrated the capacity to timely deliver video lottery terminals and associated equipment to licensed operators and licensed limited video lottery retailers who hold permits issued under part 11 of this article to own or lease video lottery terminals from licensed manufacturers.

§29-22B-507. Persons having control of an applicant for a limited video lottery license.

The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary
interest in the applicant or who the commission determines to have the ability to control the applicant.

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

§29-22B-508. Commission action on applications.

(a) The commission may not issue any license until after the background investigations are concluded. This provision shall not apply to an application for renewal of a license except to the extent background investigations are required of an applicant for renewal of a license in legislative rules of the commission.

(b) The commission shall make an affirmative determination that the applicant is qualified and that the applicable license fees have been paid prior to issuing any license.

§29-22B-509. Incomplete application not to be considered.

(a) The lottery commission shall notify the applicant in writing if an application is incomplete and the notification shall state the deficiencies in the application.

(b) The commission may not consider incomplete applications. The commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.


The burden of proving qualification for any limited video lottery license or for renewal thereof is on the applicant.
§29-22B-511. Issuance of order refusing to issue or renew license, or suspending or revoking same.

1 (a) The commission shall notify applicants and licensees in writing of the denial, suspension or revocation of a license and the reasons for the denial, suspension or revocation in accordance with the provisions of section 22B-518.

5 (b) An applicant may request a hearing to review a license denial, suspension or revocation in accordance with part 15 of this article.


1 The lottery commission shall determine on a continuing basis the eligibility of licensees to hold a license. Notwithstanding any other provision of this article, each operator and limited video lottery retailer shall meet the residency requirements in sections 22B - 503 and 22B - 504 of this article and shall be a resident of this state during the period in which the licensed issued for the operator or limited video lottery retailer is in effect.

§29-22B-513. Application forms and other documents.

1 (a) The commission shall determine the forms of application to be used.

3 (b) All application, registration and disclosure forms and other documents submitted to the lottery commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license shall be sworn to or affirmed before an officer qualified to administer oaths.

§29-22B-514. Failure to reveal material fact; false or misleading material.
(a) An applicant who knowingly fails to reveal any fact that is material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license.

(b) An applicant who is awarded a license or renewal of a license shall give the commission written notification of any material change in the information previously submitted in or with the application for the license or for renewal thereof, whichever is the most recent document filed with the commission, within thirty days after the material change occurs or the licensee becomes aware of the material change, whichever event occurs last.

§29-22B-515. Bonding requirements for operators and limited video lottery retailers who are permittees.

Before any operator or limited video lottery retailer is issued a permit under part 11 of this article to own or lease video lottery terminals from a licensed manufacturer, the permittee shall post a bond or irrevocable letter of credit in a manner and in an amount established by the commission. The bond must be issued by a surety company authorized to transact business in West Virginia and the company must be approved by the insurance commission of this state as to solvency and responsibility. A permittee who is a video lottery retailer that has permits for two or more restricted access adult-only facilities may post a blanket bond.

§29-22B-516. Applicant bears the risk of adverse publicity.

Each applicant bears all risks of adverse public notice, embarrassment, criticism, damages or financial loss which may result from any disclosure or publication of any material or information obtained by the lottery commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the
lottery commission, the state of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

§29-22B-517. Renewal of licenses.

The commission shall renew video lottery licenses annually on a date set by the commission, if each person seeking license renewal submits the applicable renewal fee, completes all renewal forms provided by the commission, and continues to meet all qualifications for a license.

§29-22B-518. Annual license fees.

(a) The following license fees shall be paid annually by each licensed operator, manufacturer, service technician or limited video lottery retailer:

1. Operator: $10,000;
2. Manufacturer: $10,000;
3. Service technician: $100;

(b) The applicable fee shall be paid to the commission at the time the application for a license is submitted to the commission and upon the annual renewal date each year thereafter, at which time the license may be renewed.

(c) A manufacturer who ceases supplying any additional video lottery terminals to permittees in this state may continue to supply repair parts and service for video lottery terminals previously provided to permittees, if an annual renewal fee of one thousand dollars is paid and the manufacturer is otherwise eligible for licensure under this article.
(d) License fees collected under this section shall be deposited in the fund established in section 29-22-18a.

PART 6. BACKGROUND INVESTIGATIONS.

§29-22B-601. Establishment of procedures for background investigations.

(a) The lottery commission, through a cooperative agreement with the state police, shall establish procedures for conducting background investigations for the purpose of determining whether an applicant has been charged with, indicted for, or convicted of a crime that may have bearing upon the applicant’s fitness to hold a license under this article.

(b) A background investigation must include, but not be limited to, (1) accessing the national criminal history background check system as defined in section 22B-319 and (2) reviewing any other readily accessible state or federal criminal history records that may be pertinent to the background investigation.

(c) The state police shall make a determination whether the applicant has been convicted of, or is under pending indictment for, a crime that bears upon the applicant’s fitness to hold a license under this article and shall convey that determination to the lottery commission.


The state police shall establish and maintain an adequate system for background investigations that:

(1) Ensures that timely background investigations are conducted on applicants for limited video lottery licenses, current licensees, and other persons required to be investigated
by the lottery commission in accordance with the provisions of this article or by legislative rules promulgated pursuant to this article;

(2) Provides for review and oversight of applicants, current licensees, and other persons on an ongoing basis;

(3) Provides that upon receipt of a background check report lacking disposition data, further research will be conducted in whatever state and local recordkeeping systems are available in order to obtain complete data;

(4) Provides for prompt notification to the lottery commission of the results of background investigations before the issuance or renewal of any of license; and

(5) Clearly defines a standard whereby a person's prior activities, criminal record, if any, or reputation, habits and associations are such as to pose a threat to the public interest or to the effective regulation of limited video lottery, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, thereby rendering that person ineligible for licensing.

§29-22B-603. Guidelines for background investigations.

The lottery commission may not request a background check of an applicant under section 22B-601 of this article unless the applicant first provides a set of fingerprints and completes and signs a statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document (as defined in section 22B-312 of this article) of the applicant;

(2) Declares that the applicant has not been convicted of a crime or, if the applicant has been convicted of a crime,
contains a description of the crime and the particulars of the conviction. For the purposes of this section, an applicant has not been convicted of a crime if he or she was convicted of a non-moving motor vehicle violation or a speeding violation that does not arise in connection with a motor vehicle collision;

(3) Notifies the applicant that the lottery commission will request a background check under section 22B-601 of this article; and

(4) Notifies the applicant of the applicant's rights under section 22B-604 of this article.

§29-22B-604. Applicant's rights regarding background investigations.

Each applicant who is the subject of a background check is entitled to a copy of his or her background investigation report, and has the right to challenge the accuracy and completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination is made by the lottery commission that would deny issuance of a license or renewal of a license.

PART 7. DUTIES AND RESPONSIBILITIES OF LICENSEES.

§29-22B-701. General duties of all licensees.

All video lottery license holders shall:

(1) Promptly report to the commission any facts or circumstances related to video lottery operations that constitute a violation of state or federal law;

(2) Conduct all video lottery activities and functions in a manner that does not pose a threat to the public health, safety or
welfare of the citizens of this state, and which does not adversely affect the security or integrity of the lottery;

(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims that may be asserted against a license holder, this state or the commission and its employees arising from the license holder’s participation in the video lottery system authorized by this article;

(4) Assist the commission in maximizing video lottery revenues;

(5) Maintain all records required by the commission;

(6) Upon request by the commission or any designated agent of the commission, provide the commission access to all records and the physical premises of the business or businesses where the license holder’s video lottery activities occur, for the purpose of monitoring or inspecting the license holder’s activities and the video lottery games, video lottery terminals and associated equipment;

(7) Keep current in all payments and obligations to the commission; and

(8) Notify the commission in writing of any proposed change of ownership or control of the license holder and of all other transactions or occurrences relevant to license qualification, and receive commission approval prior to any change of ownership or control of a licensed manufacturer, operator or limited video lottery retailer.

§29-22B-702. Additional duties of limited video lottery retailers.

In addition to the general duties imposed on all licensees in section 22B-701, a limited video lottery retailer shall:
3 (1) Attend all commission mandated meetings, seminars and training sessions concerning operation of video lottery terminals, the validation and redemption of video lottery winning tickets and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets;

(3) Supervise video lottery operations and ticket validation procedures at the applicable location;

(4) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(5) Ensure that telephone lines from the commission’s central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(6) Ensure that video lottery terminals are within the sight and control of designated employees of the limited video lottery retailer;

(7) Ensure that video lottery terminals are placed and remain placed in the specific locations which have been approved by the commission. A video lottery terminal in a restricted access adult-only facility may not be relocated within the facility without the prior written approval of the commission;

(8) Monitor video lottery terminals to prevent access to or play by persons who are under the age of twenty-one years or who are visibly intoxicated;
(9) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(10) Provide no access by a player to an automated teller machine (ATM) in the restricted access adult-only facility where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(11) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(12) Report promptly in writing to the operator and the commission all video lottery terminal malfunctions and notify the commission in writing of the failure of an operator or service technician to provide prompt service and repair of the terminals and associated equipment;

(13) Conduct no video lottery advertising or promotional activities;

(14) Not use the words “video lottery” in the name of the approved location, or in any directions or advertising visible from outside the retailer’s establishment;

(15) Install, post and display prominently within or about the approved location signs, redemption information and other promotional material as required by the commission;

(16) Permit video lottery to be played only during those hours established and approved by the commission: Provided, that the limited video lottery retailer shall not permit video lottery to be played beyond the hour during which liquor may be served;
(17) Contract with no more than one licensed operator for the placement of video lottery terminals at the licensed location;

(18) Maintain insurance covering all losses as the result of fire, theft or vandalism to video lottery terminals and associated equipment; and

(19) Comply with all applicable provisions of this article and rules and orders of the commission.

§29-22B-703. Additional duties of limited video lottery retailers who are permittees.

In addition to the general duties imposed on all licensees in section 22B-701 and the additional duties imposed on all limited video lottery retailers in section 22B-702, a limited video lottery retailer who is a permittee shall:

(1) Acquire video lottery terminals by purchase, lease or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number he or she is authorized to operate in this state as stated in the permit issued under part 11 of this article;

(3) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission’s central control computer;

(4) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

(5) Ensure that telephone lines from the commission’s central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent
any person from tampering or interfering with the operation of the telephone lines;

(6) Assume financial responsibility for proper and timely payments of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(7) Enter into contracts with a licensed operator, licensed manufacturer or other businesses to provide for the maintenance and repair of video lottery terminals and associated equipment only by individuals who are licensed service technicians or employ one or more licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(8) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(9) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal; and

(10) Maintain a separate bank account into which the limited video lottery retailer shall deposit the gross terminal income from all of the limited video lottery retailer’s video lottery terminals.

§29-22B-704. Duties of limited video lottery retailer regarding payment of credits.

(a) A limited video lottery retailer shall not make payment for credits awarded on a video lottery terminal unless the ticket meets the following requirements:

(1) The ticket is fully legible and printed on paper approved by the commission and the ticket contains all information required by this article;
(2) The ticket is not mutilated, altered, unreadable or tampered with in any manner;

(3) The ticket is not counterfeit, in whole or in part; and

(4) The ticket is presented by a person authorized to play video lottery pursuant to this article.

(b) Each limited video lottery retailer shall redeem tickets during the business hours of operation. Credits shall be immediately paid in cash or by check when a player presents a valid ticket for payment. No credits may be paid in tokens, chips or merchandise. The limited video lottery retailer is responsible for all income tax reporting of prize payments paid to players above the threshold set by the United States Internal Revenue Service.

(1) A limited video lottery retailer may not redeem tickets for credits awarded on a video lottery terminal that is not located on its premises;

(2) A ticket must be presented for payment no later than ten days after the date the ticket is printed. The commission is not liable for the payment of any video lottery ticket credits.

(c) A limited video lottery retailer shall deface all redeemed tickets in a manner that prevents any subsequent presentment and payment.

(d) The commission is not responsible for any video lottery terminal malfunction that causes a credit to be wrongfully awarded or denied to players. The permittee is solely responsible for any wrongful award or denial of credits.

§29-22B-705. Additional duties of manufacturers.

In addition to the general duties imposed on all licensees in section 22B-701 of this article, a manufacturer shall:
(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in part 9 of this article;

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed permittees;

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state;

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, beyond a nominal consideration of one dollar per year;

(5) Provide to licensed permittees technical assistance and training in the service and repair of video lottery terminals and associated equipment so as to assure the continuous authorized operation and play of the video lottery terminals;

(6) Obtain certification of compliance under the provisions of part fifteen of the federal communication commission rules for all video lottery terminals placed in this state;

(7) Comply with all applicable provisions of this article and rules and orders of the commission; and

(8) Sell or lease video lottery terminals or associated equipment to a permittee who is a limited lottery retailer under terms and conditions that are no more favorable than the terms and conditions under which similar terminals or equipment are generally sold or leased to permittees who are licensed operators.

§29-22B-706. Additional duties of operators.

In addition to the general duties imposed on all licensees in section 22B-701 of this article, an operator shall:
(1) Acquire video lottery terminals by purchase, lease or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number they are authorized to operate in this state as stated in the permit issued under part 11 of this article;

(3) Contract with limited video lottery retailers for a secure location for the placement, operation and play of the video lottery terminals;

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the limited video lottery retailer, which may be not less than forty percent nor more than fifty percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

(5) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission’s central control computer;

(6) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

(7) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(8) Ensure that telephone lines from the commission’s central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;
(9) Ensure that video lottery terminals are placed and remain placed in the specific places within the approved restricted access adult-only facility that have been approved by the commission. No video lottery terminal in a restricted access adult-only facility may be relocated within the restricted access adult-only facility without the prior written approval of the commission;

(10) Assume financial responsibility for proper and timely payments by limited video lottery retailers of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(11) Enter into contracts with limited video lottery retailers to provide for the maintenance and repair of video lottery terminals and associated equipment only by licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(12) Conduct no video lottery advertising and promotional activities;

(13) Install, post and display prominently within or about the approved location signs, redemption information and other material as required by the commission;

(14) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least one million dollars per claim;

(15) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(16) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal;
(17) Comply with all applicable provisions of this article and rules and orders of the commission; and

(18) Maintain a separate bank account into which the operator shall deposit the gross terminal income from all of the operator’s video lottery terminals.

§29-22B-707. Additional duties of service technicians.

In addition to the general duties imposed on all licensees in section 22B-701 of this article, a service technician shall:

(1) Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation of those terminals;

(2) Attend all commission mandated meetings, seminars and training sessions concerning the repair and maintenance of licensed video lottery terminals and associated equipment;

(3) Promptly notify the commission in writing of any electronic or mechanical video lottery terminal malfunctions; and

(4) Comply with all applicable provisions of this article and rules and orders of the commission.

PART 8. APPROVAL OF VIDEO LOTTERY TERMINALS AND ASSOCIATED EQUIPMENT.

§29-22B-801. Manufacturer seeking approval of terminal must be licensed; prohibition against placement of unapproved terminal.

(a) Only licensed manufacturers may apply to the lottery commission for approval of a video lottery terminal or associated equipment.
(b) A manufacturer may not sell or lease a video lottery terminal for placement in a licensed facility in the state unless the terminal has been approved by the lottery commission.

§29-22B-802. Testing of video lottery terminals and associated equipment.

(a) The manufacturer shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or associated equipment.

(b) The lottery commission may require that the manufacturer transport two working models of a video lottery terminal to the location designated by the lottery commission for testing, examination and analysis. When this is required:

(1) The manufacturer shall pay all costs of testing, examination, analysis and transportation of the video lottery terminal models. The testing, examination and analysis of any video lottery terminal model may require dismantling of the terminal, and some tests may result in damage or destruction to one or more electronic components of the terminal model. The lottery commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal; and

(2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The lottery commission shall conduct an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the commission conducted acceptance test, the manufacturer shall make all modifications required by the commission.

§29-22B-803. Reporting of testing results.
After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with the provisions of this article.

PART 9. VIDEO LOTTERY HARDWARE AND SOFTWARE.

§29-22B-901. Hardware specifications.

Video lottery terminals licensed for placement in this state must meet the hardware specifications set forth in this part 9.

§29-22B-902. Control of electrical power.

(a) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of ninety days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

(b) An on/off switch that controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

(c) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

§29-22B-903. Coin or bill acceptors.

(a) A minimum of one electronic or mechanical coin acceptor or other means by which to accurately and efficiently
establish credits must be installed on each video lottery
terminal. Each video lottery terminal may also contain bill
acceptors for one or more of the following: One-dollar bills,
five-dollar bills, ten-dollar bills and twenty-dollar bills.

(b) The lottery commission shall approve all coin and bill
acceptors prior to use on any video lottery terminal in this state.

(c) A video lottery terminal shall not allow more than two
dollars to be wagered on a single game.

§29-22B-904. Security; access to the interior of video lottery
terminals.

(a) Access to the interior of video lottery terminals shall be
controlled through a series of locks and seals.

(b) The main logic boards and all erasable programmable
read-only memory chips (EPROMS) are considered to be
owned by the lottery commission and shall be located in a
separate locked and sealed area within the video lottery
terminal.

(c) The cash compartment shall be located in a separate
locked area within or attached to the video lottery terminal.

(d) No hardware switches, jumpers, wire posts or any other
means of manipulation may be installed which alter the pay
tables or payout percentages in the operation of a game.
Hardware switches on a video lottery terminal intended to
control the terminal’s graphic routines, speed of play, sound
and other purely cosmetic features may not be used without the
written approval of the commission.

(e) All video lottery terminals shall have a security system
which will temporarily disable the gaming function of the
terminal while opened.
§29-22B-905. Printing mechanism.

1 Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal, or other means of capturing and retaining an electronic copy of the ticket data as approved by the lottery commission. The following information must be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

8 (1) The number of credits accrued;

9 (2) The value of the credits in dollars and cents displayed in both numeric and written form;

11 (3) The time of day and date;

12 (4) The validation number; and

13 (5) Any other information required by the commission.

§29-22B-906. Identification plate.

1 A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

4 (1) The manufacturer of the video lottery terminal;

5 (2) The serial number of the terminal; and

6 (3) The model number of the terminal.

§29-22B-907. Display of information on terminal face or screen.

1 All information required by this section must be displayed under glass or another transparent substance.
(1) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play that are incomplete, confusing, misleading or inconsistent with game rules approved by the commission.

(2) For each video lottery game, there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols.

(3) No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior written approval of the commission.

(4) A label prominently displaying information on how to locate and contact persons or organizations available for help, assistance or treatment for persons who may have a gambling addiction, together with the telephone number “1-800-GAMBLER.”

§29-22B-908. Communication with central computer system.

Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the lottery commission’s central computer system. The commission shall provide to licensed manufacturers, or applicants applying for a manufacturer’s license, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

§29-22B-909. Random number generator required.

Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A
selection process is random if it meets the following statistical criteria:

(1) Chi square test. — Each symbol or number shall satisfy the ninety-nine percent confidence limit using the standard chi-square statistical analysis of the difference between the expected result and the observed result;

(2) Runs test. — Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the "runs test" for the existence of recurring patterns within a set of data;

(3) Correlation test. — Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play; and

(4) Serial correlation test. — Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.


Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage shall be determined using standard methods of probability theory;
8 (2) Manufacturers shall file a request and receive written
9 approval from the commission prior to manufacturing for
10 placement in this state video lottery games programmed for a
11 payout greater than ninety-two percent of the amount wagered.
12 Commission approval shall be obtained prior to applying for
13 testing of the high payout terminals; and
14
15 (3) Each game shall have a probability greater than one in
16 seventeen million of obtaining the maximum payout for each
17 play.

§29-22B-911. Continuation of current game after malfunction.

1 Each video lottery terminal shall be capable of continuing
2 the current game with all current game features after a video
3 lottery terminal malfunction is cleared. If a video lottery
4 terminal is rendered totally inoperable during game play, the
5 limited video lottery retailer shall return the current wager and
6 all credits appearing on the video lottery terminal screen prior
7 to the malfunction to the player.

§29-22B-912. Electronic accounting required.

1 (a) Each video lottery terminal shall at all times maintain
2 electronic accounting regardless of whether the terminal is
3 being supplied with electrical power. Each meter shall be
4 capable of maintaining a total of no less than eight digits in
5 length for each type of data required. The electronic meters
6 shall record the following information:
7
8 (1) The number of coins inserted by players or the coin
9 equivalent if a bill acceptor is being used;

10 (2) The number of credits wagered;

11 (3) The number of credits won;
(4) The number of credits paid out by a printed ticket;
(5) The number of times the logic area was accessed;
(6) The number of times the cash door was accessed;
(7) The number of credits wagered in the current game;
(8) The number of credits won in the last complete video lottery game; and
(9) The number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(b) No video lottery terminal may have any mechanism that would allow the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, the limited video lottery retailer shall record all meter readings in the presence of a commission employee.

PART 10. CONDITIONS FOR SALE OR LEASE OF VIDEO LOTTERY TERMINALS.

§29-22B-1001. Manufacturer must be licensed.

A manufacturer of video lottery terminals may not sell or lease video lottery terminals to any person for use in this state unless the manufacturer possesses a current manufacturer’s license issued by the lottery commission as provided in this article.

§29-22B-1002. Manufacturers may sell or lease only to permittees.

A licensed manufacturer of video lottery terminals may only sell or lease video lottery terminals for use in this state to
a person who possesses at the time of delivery a valid permit to
own or lease one or more video lottery terminals and a valid
operator's license or a valid limited video lottery retailer's
license issued by the lottery commission as provided in this
article.

§29-22B-1003. Terminals must be approved.

A licensed manufacturer may not sell or lease a video
lottery terminal for placement by a permittee in this state unless
the terminal has been approved by the lottery commission as
provided in this article.

§29-22B-1004. Purchase or lease by permittees.

Only permittees may purchase or lease video lottery
terminals from a licensed manufacturer.

PART 11. ALLOCATION AND DISTRIBUTION OF
VIDEO LOTTERY TERMINALS.

§29-22B-1101. Limitation on number and location of video lottery
terminals.

(a) The lottery commission may not authorize the place-
ment of more than nine thousand video lottery terminals in
restricted access adult-only facilities in this state.

(b) No person may directly or indirectly operate more than
seven and one-half percent of the number of video lottery
terminals authorized in this section, which shall be located only
in restricted access adult-only facilities.

(c) No licensed limited video lottery retailer may be
authorized to have on the premises for which the license was
issued more than five video lottery terminals except that a
fraternal society or veteran's organization that is (A) a fraternal
beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended, (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10), or (C) a veterans' organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code may be authorized to have on the premises for which the license was issued not more than ten video lottery terminals.

§29-22B-1102. Permits to operate video lottery terminals; expiration date; annual fee to be paid by May 1st.

(a) The lottery commission shall establish forms for an operator's permit to own or lease and operate video lottery terminals and a permit for a limited video lottery retailer that allows the holder to own or lease video lottery terminals from a licensed manufacturer. The number of video lottery terminals that a person may own or lease or have on a limited video lottery retailer premises shall be stated in the license or permit issued by the commission as provided in this article.

(b) Permits shall be issued by the commission for a period of ten years, except that all permits expire on the thirtieth day of June, 2011, unless they are sooner surrendered, modified, suspended or revoked as provided in this article. Provided, That the annual fee imposed by this part for each video lottery terminal authorized in the permit shall be paid on or before the first day of May each year.

§29-22B-1103. Permit fee.

For the privilege of holding a permit that authorizes the licensee to own or lease video lottery terminals from a licensed manufacturer, the person shall pay an annual fee of one thousand dollars per video lottery terminal for which the permit is issued. This fee shall initially be paid at the time the permit is issued for the number of video lottery terminals a person is
authorized to own or lease without going through the bid process. Thereafter, this fee shall be due and payable each first day of May while the person holds the permit and the amount of the fee shall be determined by the number of video lottery terminals the person is permitted to own or lease from a licensed manufacturer.

§29-22B-1104. Reservation of authority to have video lottery terminals on or before August 1, 2001.

(a) On or before the first day of August, 2001, every person who held on the first day of January, 2001, a private club license issued as provided in article 60-7-1 et seq. of this code, or a class “A” nonintoxicating beer license issued as provided in article 11-16-1 et seq. of this code, and wants to offer video lottery terminals, as defined in this article, for the enjoyment of the licensee’s customers after the effective date of this article shall file an application to be licensed as a limited video lottery retailer under this article.

(b) The applications described in subsection (a) of this section shall be in the form prescribed by the lottery commission, be signed by the applicant or a person authorized to sign an application filed for a person who is not an individual, and provide all of the information requested by the lottery commission. The commission shall not consider any application that is incomplete in any material respect and the incomplete application shall be returned to the applicant for completion and refiling. An incomplete application submitted for a limited video lottery retailer’s license shall be returned to the applicant for completion and refiling by the first day of August, 2001.

(c)(1) An application filed on or before the first day of August, 2001 for a limited video lottery retailer’s license shall state the number of video lottery terminals to be located on the premise of the applicant and state whether the applicant will
own or lease the video lottery terminals or obtain them from an operator.

(2) The number of video lottery terminals a limited video lottery retail licensee is authorized to have on its premises shall be stated in the limited video lottery retailer's license issued to the licensee. The number of video lottery terminals a limited video lottery retailer is authorized to own or lease from a manufacturer shall be stated in the permit issued to the licensee. Once the permit is issued, the permittee may purchase or lease the number of video lottery terminals authorized in the permit. A limited video lottery retailer who elects to obtain video lottery terminals from an operator may contract with an operator for the number of video lottery terminals stated in the license.

(d) Authorization to have a video lottery terminal on the premises of a video lottery retailer expires on the thirtieth day of June, 2011, and every ten years thereafter unless during the fiscal year of the state ending the thirtieth day of June, 2011, and each ten years thereafter, the video lottery retailer files an application as provided in this section for the next ensuing ten year period.

§29-22B-1105. Determination of authorizations to be issued without bid and number of authorizations to be bid.

(a) When the applications provided for in section 22B-1104 of this part are received by the commission on or before the first day of August, 2001, the commission shall reserve for each applicant authorizations to have no more than two video lottery terminals on the premises for which the private club license issued under article 60-7-1 et seq., of this code, or a class "A" nonintoxicating beer license was issued prior to the first day of January, 2001, except that a fraternal society or veteran's
organization that is (A) a fraternal beneficiary society that is exempt from federal income tax under section 501(c)(8) of the Internal Revenue Code of 1986, as amended, (B) a domestic fraternal society that is exempt from federal income tax under section 501(c)(10), or (C) a veterans’ organization that is exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code may be authorized to have on the premises for which the license was issued not more than seven video lottery terminals.

(b) The commission shall then determine the total number of authorizations to have video lottery terminals reserved under subsection (a) of this section and subtract that number from the total number of video lottery terminals authorized for the state in section 22B-1101 of this part. This establishes the number of authorizations available for bid as provided in section 22B-1106.

(c) If an application for a limited video lottery retailer’s license is received after the first day of August, 2001, whether from an applicant who on the first day of January, 2001, held a private club license issued under article 60-7-1, et seq., of this code or a class “A” nonintoxicating beer license issued under article 11-16-1, et seq., of this code, or from an applicant who is issued a private club license or a class “A” nonintoxicating beer license after the first day of January, 2001, no authorization to have video lottery terminals may be reserved for that applicant under this section. The applicant may contract with a licensed operator to furnish video lottery terminals or may submit a bid for authorization to own video lottery terminals as provided in section 22B-1106 of this part.

(d) As used in this section the term “received” means physically received in the office of the state lottery by 4:30 p.m. on the first day of August, 2001.
§29-22B-1106. Allocation of permits to own or lease video lottery terminals by sealed bid.

(a) Any video lottery terminals not authorized by the commission under section 1105 of this article shall be allocated under the provisions of this section by sealed competitive bid.

(b) Bids for permits to own or lease video lottery terminals shall be governed by the provisions of this part 11.

(c) A permit to own or lease one or more video lottery terminals, as defined in this article, may only be issued to a person who is licensed as an operator or a limited video lottery retailer under this article.

(d) All permits issued under this section shall be based on sealed competitive bids in accordance with the provisions of this section.

(e) The commission may set a single uniform minimum bid for each video lottery terminal for which bids are sought. Each time before the first publication of a legal notice soliciting bids, the commission may set a new minimum bid.

§29-22B-1107. Bidding process.

(a) Bids for issuance of permits shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article 59-3-1, et seq. of this code;

(b) The second publication of the notice shall appear more than sixty days next preceding the final day for submitting bids;

(c) Each bid shall indicate the number of video lottery terminals for which the permit is sought. The bid shall state the amount bid for each video lottery terminal for which the permit is sought;
(d) No bid may be altered or withdrawn after the appointed hour for the opening of the bids;

(e) Subject to the provisions of subsection (f) of this section, permits shall be awarded to the persons submitting the highest per terminal bids, except that no person may be authorized to directly or indirectly own or lease more than seven and one-half percent of the total number of video lottery terminals authorized in section 22B-1101 of this article. If a high bidder already holds a permit issued under this section, the bid shall be awarded to that bidder, but only to the extent the total number of video lottery terminals the operator or limited video lottery retailer is authorized to directly or indirectly own or lease does not exceed seven and one-half percent of the number of video lottery terminals authorized for the entire state specified in section 22B-1101 of this article;

(f) No bid shall be considered unless the bond required by section 22B-1109 of this article accompanies the bid or was submitted to the state treasurer before the time designated for opening of the bid;

(g) No bid shall be considered unless the amount of the bid equals or exceeds the minimum bid amount for a video lottery terminal specified by the commission;

(h) All bids for a permit may be rejected by the commission if the commission determines that the bids are inadequate. In this event, the director shall begin anew the bidding process for the permits;

(i) Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the director shall award the permit based upon the drawing of lots among the bidders;
(j) A person submitting a bid under this article shall deliver one copy to the director of purchasing, West Virginia department of administration and deliver a second or duplicate copy to the state auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid opening;

(k) The failure to deliver or the nonreceipt of these bid forms at either of these offices prior to the appointed date and hour are grounds for rejection of the bids. In the event of any deviation between the copies submitted to the purchasing division and the state auditor, the bids as to which there is a deviation shall be rejected;

(l) After the award of a permit, the director of the lottery shall indicate upon the successful bid that it was the successful bid and the number of video lottery terminals for which a permit is awarded to the bidder. This shall be the number of video lottery terminals for which the bid was submitted, or the remaining number of video lottery terminals to be awarded when the number of video lottery terminals remaining is less than the number of terminals for which the bid was submitted. Thereafter, a copy of the bid and the bidder’s application for an operator’s license or a limited video lottery retailer license shall be maintained as a public record at the commissions’ offices and shall be open to public inspection during its normal business hours. These documents may not be destroyed without the prior written consent of the legislative auditor;

(m) Prior to issuing a permit to a successful bidder, the bid price for the number of video lottery terminals authorized in the permit plus the amount of the operator’s annual license fee or the limited video lottery retailer’s annual license fee for the first license year, as specified in section 518 of this article, shall be paid to the commission by money order, certified check or cashier’s check. If the operator’s annual license fee or the
limited video lottery retailer’s license fee was paid for the current license year before the due date of the bid amount, the license fee shall not be collected a second time for the same license year. The amount paid shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter;

(n) All permits shall be signed by the director of the lottery in the name of the state;

(o) If the successful bidder fails to pay to the commission the bid price and the operator’s annual license fee or the limited video lottery retailer’s license fee for the first license year, at the time specified by the commission, the bond provided for in section 1109 of this article shall be forfeited and the bidder shall not be issued the permit;

(p) In the event of a default, as provided in subsection (h) of this section, the commission shall then issue the permit to the next highest bidder for video lottery terminals, or reject all remaining bids and start anew the bidding procedure for the remaining number of video lottery terminals;

(q) If after a permit is awarded, an operator or limited video lottery retailer surrenders the permit, in whole or in part, or the permit is revoked or canceled by operation of law, the commission may seek bids for video lottery terminals for which authorization was surrendered or revoked, subject to the limitations and requirements of this article; and

(r) During the fiscal year of the state ending the thirtieth day of June, 2011, the commission shall seek bids for the ten-year period beginning the first day of July, 2011, and ending the thirtieth day of June, 2021.

(a) When seeking bids for the ten-year period beginning the first day of July, 2011, and ending the thirtieth day of June, 2021, and for each subsequent ten-year period, the commission shall, in determining the amount a current holder of a permit issued under section 1106 of this article shall pay for authorization to place additional video lottery terminals in this state, afford the bidder an additional preference, if the bidder submitted at least the minimum bid amount prescribed by the commission, the amount of which shall be determined as provided in subsection (b) of this section.

(b) The preference allowed by this section shall be computed by adding five percent of the bid price submitted by the current permit holder to the amount of the bid submitted by that holder.

(c) Where the commission determines that it has not issued permits for the number of video lottery terminals allowed to be placed in this state, as provided in section 1101 of this article, the commission shall allow current permit holders to bid on the remaining video lottery terminals before opening up the bidding to other persons. If the highest bid meets or exceeds the minimum bid, the commission shall determine whether, at the time of the bid, the bidder held a permit for the period ending the thirtieth day of June, 2011, or for any ten-year period thereafter, on the thirtieth day of June preceding the expiration of the permit. If the current permit holder submitted a bid that was not less than the minimum bid, the commission shall notify the bidder that upon paying the amount of the highest bid, that the permit for the ten-year period beginning the first day of July, 2011, or for any ten-year period thereafter, shall be issued to the current permit holder. If, within the time determined by the commissioner, the current permit holder pays the amount to the commission and complies with all other requirements imposed by the provisions of this article for the issuance of the permit, the permit for the ten-year period beginning the first day
§29-22B-1109. Bid bond required.

(a) Each person submitting a bid under section 22B-1107 of this article shall furnish to the commission a bond at the time of bidding, which shall guarantee the payment of one hundred percent of the price bid for the permit sought by the bidder.

(b) The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commission.

(c) If the bid bond is furnished in cash or negotiable securities, the principal shall be deposited without restriction in the state treasurer’s office and credited to the commission, but any income shall inure to the benefit of the bidder.

(d) The bond shall be returned to the bidder following the bidding if the bidder is not a successful bidder for authorization to place video lottery terminals in this state, as provided in this article.

(e) If the bidder is a successful bidder, the bid bond shall be released after the permit is issued, as provided in section 1106 of this article.

(f) If a successful bidder defaults in paying the amount due by the date specified by the commission, as provided in section 1106 of this article, the bid bond shall be forfeited to the state.

(g) If the defaulting bidder was successful only in part because the bid submitted was for authorization to place more video lottery terminals than were awarded to the bidder, the
amount of the bid bond shall be prorated and the portion of the
bid bond attributable to video lottery terminals not awarded to
the defaulting bidder shall be returned to the bidder and the rest
shall be forfeited to the state.

§29-22B-1110. Operator permit.

(a) An operator who holds a permit issued under this
section may operate the number of video lottery terminals
specified in the permit.

(b) The number of video lottery terminals authorized in the
permit shall be the sum of the number of authorizations for
which the operator is the successful bidder under this section
plus the number of authorizations reserved under section 22B-
1104 of this article for video lottery retailers that elect to obtain
video lottery terminals from the operator. If after the permit is
issued, the operator enters into additional contracts with limited
video lottery retailers with authorizations issued under section
22B-1104 or obtains additional authorizations though the
bidding process, the operator shall apply to the commission for
a supplemental permit to operate the number of video lottery
terminals set forth in the application. Attached to the applica-
tion shall be a true copy of all contracts the applicant has
entered into with persons who hold a limited video lottery
retailer’s license issued under this article for placement of video
lottery terminals in the premises of the limited video lottery
retailer for whom authorizations were reserved under section
22B-1104 of this article and a true copy of the certificate of
reservation issued by the commission to that video lottery
retailer.

(c) The contract between the operator and the limited video
lottery retailer shall be in writing and be signed by the parties,
or their duly authorized representative when the party is a
person who is not an individual.
§29-22B-1111. Reduction of video lottery terminals authorized in a retailer’s license.

1 If after a limited video lottery license is issued or a permit is issued, a retailer surrenders the license in whole or in part, or the license is modified, revoked or canceled by operation of law, the lottery commission shall then allocate authorizations to operate those video lottery terminals through the bid process described in section 1107 of this part 11, subject to the limitations and requirements of this article.

§29-22B-1112. Reduction of gambling.

1 Each limited video lottery retailer shall conspicuously post in the restricted access adult-only facility and disseminate the telephone numbers of state approved providers of problem gambling information, treatment and referral support services and further conspicuously post the following: “CAUTION Gambling and playing this machine can be hazardous to your health, your finances, and your future.”

§29-22B-1113. Operation of authorized video lottery terminals; forfeiture of authorization for failure to operate.

(a) A person who holds a permit or license to operate video lottery terminals shall place the video lottery terminals authorized by the license or permit in operation within six months after receiving the license or permit in which the terminals are first authorized. After January 1, 2002, a person who holds a permit or license to operate video lottery terminals shall place the video lottery terminals authorized by the license or permit in operation within ninety days after receiving the license or permit.

(b) After a video lottery terminal is connected to the commission’s central site system of monitoring lottery terminals, the terminal may not be off-line for more than five
consecutive days, unless the terminal is off-line due to fire,
flood, or other act beyond the control of the operator. If the
terminal is off-line due to fire, flood, or other act beyond the
test of the operator, the terminal shall be reconnected to the
commission’s central site by the date ordered by the com-
mission. The commission shall propose a legislative rule for
promulgation in accordance with the provisions of article 29A-
3-1, et seq., of this code, defining the term “other act beyond
the control of the operator” and providing for application of this
subsection (b).

(c) Except as otherwise provided in this section, authoriza-
tion to operate a video lottery terminal that is not connected to
the commission’s central site system of monitoring lottery
terminals shall be forfeited to the commission on the first day
after expiration of the applicable period specified in this
subsection (a) or (b) of this section.

PART 12. PLACEMENT AND TRANSPORTATION OF
VIDEO LOTTERY TERMINALS.


(a) Video lottery terminals allowed by this article may be
placed only in licensed limited video lottery locations approved
by the commission.

(b) All video lottery terminals in approved locations shall
be physically located as follows:

(1) The video lottery terminals shall be continuously
monitored through the use of a closed circuit television system
capable of identifying players and terminal faces and of
recording activity for a continuous twenty-four hour period. All
video tapes or other recording medium approved in writing by
the commission shall be retained for a period of at least sixty
days and be available for viewing by an authorized representa-
(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The permittee shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount location; and

(4) No video lottery terminal or video lottery camera may be relocated without prior written approval from the commission.

(c) Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.

(d) Security personnel of the commission and investigators of the alcohol beverage control commissioner shall have unrestricted access to video lottery terminal locations.

(e) Notwithstanding any other provision of this article to the contrary, the commission may not approve the placement of a video lottery terminal in a state park.

§29-22B-1202. No limited video lottery retailer license for premises within 150 feet of another licensed premises; no two license retailer locations within a common structure.
(a) A limited video lottery retailer license may not be granted for operation of video lottery terminals on a premises if, at the time of application for the license, the applicant’s premises are within one hundred fifty feet of, or has an external structural connection not amounting to a common internal wall to, a premises that already has a license for video lottery terminals.

(1) A measurement of the distance between two premises must be taken between the nearest exterior wall of each premises.

(2) When determining common ownership, the commission shall consider direct as well as indirect ownership.

(b) A premises for which a private club license to dispense alcoholic liquors, under provisions of article seven, chapter sixty of this code, or a Class A nonintoxicating beer license, under the provisions of article sixteen, chapter eleven of this code, was granted, was applied for, or the transfer of which was validly contracted for prior to the first day of January, two thousand one, is not subject to subsection (a) and (c) of this section.

(c) No more than one restricted access adult-only facility shall hold a limited video lottery retailer license to offer video lottery terminals in any single structure under one roof.

§29-22B-1203. Registration decals.

(a) Each video lottery terminal placed in operation in this state shall have a commission registration decal permanently affixed, with a video lottery terminal registration control number placed on the video lottery terminal.

(b) No person other than authorized commission personnel shall affix or remove a registration control number. The
affixing of the commission decal on a video lottery terminal evidences that the terminal has been registered, inspected, and approved for operation in this state.

(c) No terminal shall be transported out of this state until authorized commission personnel have removed the commission registration control number, except when the transportation of the terminal both begins and ends in this state.

§29-22B-1204. Installation of approved lottery terminals.

(a) The video lottery terminal manufacturer and licensed permittee are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment.

(b) The manufacturer and licensed permittee may not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a request for modification of an existing video terminal prototype is approved in writing by the commission.

(c) The request for modification shall contain a detailed description of the type of change, the reasons for the change and technical documentation of the change.

(d) Each video lottery terminal approved for placement at a licensed location shall conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission.

(e) If any video lottery terminal or any video lottery terminal modification which has not been approved by the commission is supplied by a manufacturer and operated by a licensed permittee, the video lottery terminal shall be prima facie determined to be contraband. The commission or any law-enforcement officer having jurisdiction shall seize and destroy
(f) In addition, the commission shall suspend the licenses of the licensed permittee and the licensed manufacturer for the period of time the commission considers to be appropriate under the circumstances and may impose a civil penalty, as provided in part 16 of this article.

§29-22B-1205. Transportation from manufacturer and registration of video lottery terminals.

(a) A manufacturer transporting or arranging for the transportation of one or more video lottery terminals into this state shall, prior to shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name and address of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name and address of the permittee to which the video lottery terminals are being sent and the destination of the terminals if different from the address of the permittee;

(4) The number of video lottery terminals in the shipment;

(5) The serial number of each video lottery terminal in the shipment;

(6) The model number and description of each video lottery terminal in the shipment; and

(7) The expected arrival date of the video lottery terminals at their respective destination within this state.
(b) A permittee that purchases or leases a video lottery terminal shall, upon receipt of the terminal, provide the commission with the following information on forms prescribed by the commission:

1. The full name and address of the limited video lottery retailer who will receive the video lottery terminal;

2. The full name and address of the manufacturer from whom the video lottery terminal was received;

3. The serial number of each video lottery terminal received;

4. The model number and description of each video lottery terminal received;

5. The date and time of video lottery terminal arrival; and

6. The expected date and time of video lottery terminal installation.

(c) If a video lottery terminal is not placed in operation, the permittee shall notify the commission in writing of the location where the terminal is stored.

§29-22B-1206. Any other transportation of video lottery terminals.

(a) Any person who transports a video lottery terminal from one location to another in this state, other than for repair or servicing purposes, shall notify the commission in writing prior to the transportation of the terminal and provide the following information on forms required by the commission:

1. The full name and address of the person or entity transporting the video lottery terminal;
(2) The reason for transporting the video lottery terminal;

(3) The full name and address of the person or entity to whom the terminal is being sent and the destination of the video lottery terminal if it is different from the address;

(4) The serial and model number of the video lottery terminal;

(5) The video lottery terminal license number, if affixed;

(6) The manufacturer of the video lottery terminal; and

(7) The expected date and time of video lottery terminal installation or reinstallation.

(b) Any person shipping video lottery terminals to a destination outside of this state shall, prior to the shipment, provide the commission with the following information on forms prescribed by the commission:

(1) The full name and address of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name and address of the person to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

(4) The serial number of each video lottery terminal being shipped;

(5) The model number and description of the video lottery terminal being shipped;

(6) The video lottery terminal control number, if affixed;
(7) The manufacturer of the video lottery terminal being shipped; and

(8) The expected date and time of the shipment.

**PART 13. MAINTENANCE AND REPAIR OF VIDEO LOTTERY TERMINALS.**


(a) No video lottery terminal may be placed in operation in this state until the manufacturer provides training in the service and repair of each approved video lottery terminal model and service technicians complete the training.

(b) Manufacturers shall submit to the commission the following information on each training program conducted:

(1) An outline of the training curriculum;

(2) A list of the instructors and their qualifications;

(3) Instructional materials; and

(4) The time, dates and location of the training programs.

(c) Manufacturers shall notify all licensed permittees who have purchased or leased that manufacturer’s video lottery terminals of all scheduled training programs.

(d) The manufacturers shall schedule training programs at convenient locations within this state to facilitate attendance by service technicians.

(e) Manufacturers shall inform licensed permittees of any new developments in the service and repair of video lottery terminals and provide appropriate subsequent training programs.
(f) The manufacturers shall issue a training certificate to each person upon successful completion of a video lottery training program.

(g) The certificate shall include the name of the person who completed the training program and the date and the location of the training program.

(h) A person who successfully completes training is eligible for a service technician's license.

(i) No person may conduct maintenance (other than clearing paper ticket jams or clearing coin and bill acceptor jams) on any video lottery terminal or associated equipment unless the commission has issued a service technician license to that person.

(j) Each manufacturer shall file with the commission the following information within two weeks after the completion of a training program:

(1) The name of each person who attended and completed the training program;

(2) The name of the manufacturer offering the course;

(3) The manufacturer’s video lottery terminal models on which training for service and repair was provided;

(4) The date and location of the training program; and

(5) Copies of all certificates of completion.

§29-22B-1302. Maintenance log.

A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person, including lottery personnel, who gains entry into any internal
space of a video lottery terminal shall sign the log, record the
time and date of entry, record the mechanical meter readings
and list the areas inspected or repaired. The maintenance log
forms shall be retained by permittees for a period of three years
from the date of the last entry. The maintenance logs shall be
available upon request for inspection by the commission.

§29-22B-1303. Master keys.

Permittees shall provide the commission with a master key
for access into the main cabinet door of each video lottery
terminal placed in operation. The commission shall provide a
logic box seal. The seal shall be affixed by commission
personnel to prevent unauthorized access to the video lottery
terminal logic unit.

§29-22B-1304. Repairs to logic board or circuitry.

(a) No repairs to, or replacement of, the logic board or
circuitry within the logic area shall occur unless authorized
commission personnel are present and observe the repairs or
replacement.

(b) The logic area seal shall not be broken by anyone other
than authorized commission personnel.

(c) Each service technician shall submit a written report to
the commission within twenty-four hours after the repairs or
replacement are completed and the report shall include the
serial number of any replacement board and the new logic area
seal number.

(d) The commission shall test the software EPROMS on the
logic board of each video lottery terminal prior to sealing the
logic area.
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15 (e) License holders shall promptly notify the commission in writing of any discovered damage, tears or breaks in the logic area seal. This written notification shall be delivered electronically or by telephone facsimile machine whenever possible. Upon receipt of that notice, the commission shall disable the video lottery terminal. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

PART 14. NET TERMINAL INCOME AND DISTRIBUTION OF REVENUES.

§29-22B-1401. Accounting for the state's share of gross terminal income.

1 (a) The gross terminal income from all operating video lottery terminals of a permittee shall be calculated periodically by the commission.

(b) Each licensed permittee shall maintain in its bank account an amount equal to or greater than the lottery commission's share of the gross terminal income from its operation of video lottery machines, to be electronically transferred by the lottery commission on dates established by the commission.

(c) Upon a permittee's failure to maintain the bank account balance required in subsection (b) of this section, the commission may disable all of a permittee's video lottery terminals until full payment of all amounts due is made.

(d) Interest shall accrue on any unpaid balance due the commission at the rates charged for state income tax delinquency under chapter eleven of this code. The interest shall begin to accrue on the date payment is due to the commission and shall continue to accrue until the amount due, including applicable interest, is paid. Payments shall be applied first to

(a) The commission’s central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and send to the permittee a statement by mail, facsimile or internet e-mail reflecting the gross terminal income generated by the licensee’s video lottery terminals. Each permittee shall report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings.

(b) The permittee is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.

(c) The licensed operator is solely responsible for paying the negotiated share of net terminal income, to each limited video lottery retailer to whom it has supplied video lottery terminals under the provisions of this article.

(d) Each limited video lottery retailer’s periodic distribution from the appropriate operator shall be paid by check or by electronic funds transfer to the limited video lottery retailer’s designated bank account.

(e) Until an accounting discrepancy is resolved in favor of the permittee, the commission may make no credit adjustments.

(f) For any video lottery terminal reflecting a discrepancy, the permittee shall submit to the commission the maintenance log which includes current mechanical meter readings and the
audit ticket which contains electronic meter readings generated by the terminal’s software.

(g) If the meter readings and the commission’s records cannot be reconciled, final disposition of the matter shall be determined by the commission.

(h) Any accounting discrepancies that cannot be otherwise resolved shall be resolved in favor of the commission.

§29-22B-1403. Payover of state’s share of gross terminal income.

(a) The commission shall periodically transfer from each permittee’s bank account described in subsection 22B-1401(b) of this article, the state’s share of gross terminal income as calculated under section 22B-1408 of this article.

(b) The permittee shall remit payment by mail and submit the report required by subsection (c) of this section if the electronic transfer of funds is not operational or the commission notifies the permittee that remittance by this method is required.

(c) If the remittance is by mail, the permittee shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the state’s share of the amount generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(d) A permittee may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered
23 confidential by the commission. The commission may charge
24 a reasonable fee for the cost of producing and mailing any
25 report other than the billing statements.

§29-22B-1404. Permittees to furnish bank authorizations.

1 (a) Each permittee shall furnish to the commission all
2 information and bank authorizations required to facilitate the
3 timely transfer of moneys to the commission and from the
4 commission to each permittee.

5 (b) Each permittee shall provide the commission thirty
6 days' advance notice of any proposed account changes in order
7 to assure the uninterrupted electronic transfer of funds.

§29-22B-1405. State's share of gross terminal income held in
trust.

1 The amount of gross terminal income required to be paid
2 over to the commission, shall be deemed to be moneys held in
3 trust for the state of West Virginia while in the possession or
4 constructive possession of any operator or limited video lottery
5 retailer and until the state's share of gross terminal income is
6 paid over to the commission.

§29-22B-1406. Examination of permittee books and records.

1 The commission has the right to examine all accounts, bank
2 accounts, financial statements and records in a permittee's
3 possession, under its control or in which it has an interest and
4 the licensed permittee shall authorize all third parties in
5 possession or in control of the accounts or records to allow
6 examination of any of those accounts or records by the commis-
7 sion.

§29-22B-1407. Civil penalty for failure to pay over state's share
of gross terminal income.
(a) Any person required by law or contract to collect, truthfully account for, and pay over any of the state's share of gross terminal income who willfully fails to truthfully account for and pay over the net terminal income, or willfully attempts in any manner to evade or defeat any payment thereof, shall, in addition to other penalties provided by law, be liable for payment of a civil money penalty equal to the total amount of the state's share of gross terminal income not paid over to the commission.

(b)(1) No penalty may be imposed under subsection (a) unless the director notifies the person in writing, delivered in person or by mail sent to the last known address of the operator or limited video lottery retailer, that he or she is subject to an assessment of this penalty.

(2) The mailing of the notice described in subdivision (1) (or, in the case of notice delivered in person, the delivery) shall precede any notice and demand for payment of any penalty under subsection (a) of this section, by at least sixty days.

(3) If a notice described in subdivision (1) of this subsection (b) with respect to any penalty is mailed or delivered in person before the expiration of the three-year period for the assessment of the penalty (determined without regard to this subdivision), the three-year period provided for the assessment of a penalty shall not expire before the later of:

(A) The date ninety days after the date on which such notice was mailed, or delivered in person, or

(B) If there is a timely protest of the proposed assessment, the date thirty days after the director makes a final administrative determination with respect to the protest.
(4) The requirement that preliminary notice be given shall not apply if the director finds that the collection of the penalty is in jeopardy.

(c) This penalty may be collected by civil action instituted within three years after the date the state’s share of gross terminal income not paid over to the commission should have been paid over to the commission, except as provided in subsection (b) of this section.

(d) If more than one person is liable for the penalty under subsection (a) with respect to any payment of the state’s share of gross terminal income, each person who paid the penalty shall be entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by the person over that person’s proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with, an action for collection of such penalty brought by the state of West Virginia.

(e) No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under section 501 of the Internal Revenue Code of 1986, as amended, if such member:

(1) Is solely serving in an honorary capacity;

(2) Does not participate in the day-to-day or financial operations of the organization; and

(3) Does not have actual knowledge of the failure on which the penalty is imposed.

This subsection (e) shall not apply if it results in no person being liable for the penalty imposed by subsection (a) of this section.
§29-22B-1408. Distribution of state's share of gross terminal income.

(a) The state's share of gross terminal income is calculated as follows:

(1) The commission shall deposit two percent of gross terminal income into the state lottery fund for the commission's costs and expenses incurred in administering this article. From this amount, not less than one hundred fifty thousand dollars nor more than one million dollars per fiscal year, as determined by the commission each year, shall be transferred to the compulsive gambling treatment fund created in section 29-22A-19 of this chapter. In the event that the percentage allotted under this subsection for the commission's costs and expenses incurred in administering this article generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars to be deposited in the fund established in section 29-22-18a of this chapter.

(2) Gross profits are determined by deducting the percentage described in subdivision (1) of this subsection, from gross terminal income.

(3) The commission shall receive thirty percent of gross profits as defined in subdivision (2) of this subsection except as otherwise provided in this subdivision. On the first day of June, 2002, the commission shall calculate the aggregate average daily gross terminal income for all operating video lottery terminals during the preceding three month period. Thereafter, the commission shall make the calculation on the first day of
the month preceding the months of October, January, April and July of each year. So long as the aggregate average gross terminal income per day for the operating video lottery terminals does not exceed sixty dollars, the commission's share of gross profits shall continue to be thirty percent for the succeeding quarter of the year beginning the first day of July. Beginning on the first day of July, 2002 and the first days of October, January, April and July in 2002 and thereafter, if the commission's calculation of aggregate average daily gross terminal income per video lottery terminal yields an amount greater than sixty dollars, one of the following schedules apply: If the amount is greater than sixty dollars per day but not greater than eighty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-four percent; if the amount is greater than eighty dollars per day but not greater than one hundred dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-eight percent; if the amount is greater than one hundred dollars per day but not greater than one hundred twenty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-two percent; if the amount is greater than one hundred twenty dollars per day but not greater than one hundred forty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-six percent; if the amount is greater than one hundred forty dollars per day, the commission's share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be fifty percent. This amount shall be known as net terminal income.

(b) Net terminal income shall be distributed by the commission as follows:
(A) Beginning the first day of July, 2002, a county and
the incorporated municipalities within that county shall receive
two percent of the net terminal income generated by limited
video lottery terminals located within the county;

(B) From this two percent of net terminal income, each
municipality shall receive a share that bears the same propor-
tion to the total two percent of net terminal income as the
population of the municipality bears to the total population of
the county as determined by the most recent decennial United
States census of population, and the county shall receive the
remaining portion of the two percent of net terminal income;

(2) Any remaining funds shall be deposited into the state
excess lottery revenue fund established in section eighteen-a,
article twenty-two of this chapter.

(c) The licensed operators and limited video lottery retailers
shall receive the balance of gross terminal income remaining
after deduction of the state’s share as calculated pursuant to this
section.

PART 15. APPEAL OF ORDER OF THE COMMISSION.

§29-22B-1501. Appeal of order.

(a) Any applicant or license holder adversely affected by an
order issued under this article has the right to a hearing on the
order before the commission or a person designated as hearing
examiner, if a petition in writing requesting a hearing is served
upon the commission within ten days following the receipt of
the order by the applicant, or license holder.

(b) A petition for hearing shall be served on the commis-

The service of a petition for hearing upon the commission shall not operate to suspend the execution of any suspension or revocation of a video lottery license or any other order of the commission with respect to which a hearing is being demanded.

(d) The commission shall set a date for any hearing demanded and notify the person demanding the hearing not later than ten days before the hearing date of the time and place of the hearing. The hearing shall be held within thirty days after receipt of the petition.

§29-22B-1502. Contents of petition for hearing; security.

(a) A petition for a hearing shall be in writing and shall include an original and one copy. The petition shall contain the following:

(1) A clear and concise statement of each error which the petitioner alleges to have been committed by the commission in refusing to issue a license, or suspending or revoking a license, with each assignment of error being shown in separately numbered paragraphs;

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error;

(3) A prayer setting forth the relief sought;

(4) The signature of the petitioner; and

(5) Verification by the petitioner.

(b) The person demanding a hearing shall give security for the cost of the hearing in the amount of three hundred dollars in

(a) Hearings held under this article shall be subject to the provisions of article 29A-5-1, et seq., of this code except to the extent otherwise provided in this article. In case of any conflict, the provisions of this article shall control.

(b) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. The subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner, and the following provisions shall govern and control:

1. Every subpoena or subpoena duces tecum shall be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail;

2. All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission is the responsibility of the commission, but any party requesting issuance is responsible for service. Any person who serves any subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state, and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state;
(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission;

(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party;

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay the fees; and

(6) Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum as though it were issued by a circuit court of this state, and shall appear as a witness or produce such books, records or papers in response to the subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall, upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify in the circuit court.

(c) Hearings may not be delayed by a motion for continuance made less than seven days before the date set for the hearing.

(d) The commission may designate a hearing examiner to conduct the hearing.
(e) The petitioner may appear individually, or by legal counsel.

(f) The petitioner, or his or her duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. The waivers and agreements shall be in writing or upon the record.

(g) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs shall be filed within ten days after the hearing date.

(h) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

(i) A record shall be made of all hearings held pursuant to this article. Testimony may be recorded electronically or by a court reporter.

(j) After the conclusion of the hearing and within ten days of receipt of the transcript of the hearing, and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended deci-
sion, and if it accepts the decision, it shall cause the director to
sign and acknowledge the decision as its own, after having
reviewed the transcript and all exhibits attached and affixed to
the decision; if the commission rejects the decision, it shall
within ten days of receipt of the recommended decision prepare
a decision setting forth its own findings of fact and conclusions
of law. In either event, the decision is final unless vacated or
modified upon judicial review of the decision. A copy of the
decision shall be served upon each party to the hearing and their
attorney of record, if any, in person or by registered or certified
mail.


The applicant or license holder who filed the petition for
administrative review may appeal the decision of the commis-

sion issued under section 22B-1503 to the circuit court of
Kanawha County, West Virginia, if the petition for appeal is
filed no later than thirty days after the date upon which the
petitioner receives written notice of the final decision of the
commission.

PART 16. CIVIL PENALTIES.

§29-22B-1601. Imposition of civil penalties by the commission.

The commission may impose the civil penalties provided
for in this part 16. These civil penalties may be imposed in
conjunction with one or more other civil penalties provided in
this part 16 and in conjunction with a license suspension or
revocation or other administrative action taken against a
licensee, or as a result of an action or inaction by a licensee for
which the commission is also seeking criminal prosecution.

§29-22B-1602. Civil penalties applicable to limited video lottery
retailers.
(a) For allowing persons under age twenty-one years to play video lottery games, the limited video lottery retailer shall be fined:

(1) Two hundred dollars for a first violation;

(2) One thousand dollars for a second violation; and

(3) Five thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by five thousand dollars.

(b) For allowing persons under age twenty-one years to be present at a video lottery terminal or in the immediate area where video lottery terminals are present, the limited video lottery retailer may be fined:

(1) One hundred dollars for a first violation;

(2) Two hundred dollars for a second violation; and

(3) Three hundred dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by one hundred dollars.

(c) For allowing a person or persons to tamper in any way with, or disconnect, any data line or feature that allows the state’s central control computer to communicate with each video lottery terminal in the premises, the limited video lottery retailer may be fined:

(1) One thousand dollars for a first violation;

(2) Five thousand dollars for a second violation; and

(3) Ten thousand dollars for a third violation.
For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(d) For entering the logic area of a video lottery terminal or allowing an unauthorized person or persons to enter the logic area of a video lottery terminal, or tampering in any way with the lottery security seal, any EPROM or other chip or memory device installed in the logic area, whether or not any tampering would alter any characteristic of the video lottery terminal, the limited video lottery retailer may be fined:

(1) One thousand dollars for a first violation;

(2) Five thousand dollars for a second violation; and

(3) Ten thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(e) For failure to aim or focus a closed circuit television camera on all video lottery terminals in the premises or for failure to record all video lottery terminals during the hours of operation of the limited access adults-only facility, the limited video lottery retailer shall be fined:

(1) One hundred dollars for a first violation;

(2) One thousand dollars for a second violation; and

(3) Five thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by five thousand dollars.

(f) For violating the provisions of subdivision (10), subdivision (13) or subdivision (14) of section 29-22B-702 of this article, the limited video lottery retailer shall be fined:
(1) One hundred dollars for a first violation:

(2) One thousand dollars for a second violation;

(3) Five thousand dollars for a third violation.

For each subsequent violation the fine imposed by the commission shall increase by an additional five thousand dollars.

§29-22B-1603. Civil penalties applicable to service technicians.

(a) For entering the logic area of any video lottery terminal at any time when a representative of the West Virginia Lottery Commission is not present and observing the process, the service technician shall be fined:

(1) One hundred dollars for a first violation;

(2) One thousand dollars for a second violation; and

(3) Three thousand dollars for a third violation.

(b) For each subsequent violation, the fine imposed by the commission shall increase by one thousand dollars. If two or more service technicians participate in violation of this section, each service technician shall be fined according to this schedule.

§29-22B-1604. Civil penalties applicable to permittees.

(a) For employing or contracting with persons, other than service technicians licensed by the commission, to repair video lottery terminals, the permittee shall be fined:

(1) One thousand dollars for a first violation;

(2) Five thousand dollars for a second violation; and
(3) Ten thousand dollars for a third violation.

For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(b) For acquiring, or installing in licensed premises, any video lottery terminal that has not been manufactured and supplied by a licensed manufacturer, that has not also been tested and approved by the commission's independent testing laboratory, and that has not been approved for use in this state by the commission, the permittee shall be fined:

(1) Five thousand dollars for a first violation;

(2) Ten thousand dollars for a second violation.

(c) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

§29-22B-1605. Civil penalties applicable to manufacturers.

(a) For shipping a video lottery terminal into this state to a person who does not have a permit issued by the commission under this article, the manufacturer shall be fined:

(1) One thousand dollars for a first violation;

(2) Five thousand dollars for a second violation; and

(3) Ten thousand dollars for a third violation.

(b) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

(c) For shipping a video lottery terminal into this state that is not identical to a video lottery terminal make and model approved by the commission, including the electronic computer components, the random number generator, the coin acceptor,
the bill acceptor, and the cabinet in which the video lottery terminal is housed, the manufacturer shall be fined:

(1) One thousand dollars for a first violation;

(2) Five thousand dollars for a second violation; and

(3) Ten thousand dollars for a third violation.

(d) For each subsequent violation, the fine imposed by the commission shall increase by ten thousand dollars.

§29-22B-1606. Civil penalties for failure of licensees to perform duties.

A person who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article or legislative rule of the commission is subject to a civil penalty as may be determined by the commission in an amount not to exceed ten thousand dollars.

§29-22B-1607. Civil action to collect penalty.

(a) The commission may collect any money penalty imposed pursuant to this article by instituting civil action in any court of this state having jurisdiction over the named defendant.

(b) Collection shall be barred unless the civil action is commenced within six years after the later of (1) the date on which the prohibited conduct establishing the cause of action occurred, or (2) the date on which the commission first knew or should reasonably have known the prohibited conduct had occurred.

PART 17. CRIMINAL OFFENSES.

§29-22B-1701. Financial interest of director, etc.; receiving reward from interested party; criminal penalty; application of bribery statute.
1 (a) Neither the director of the commission, nor any member
2 or employee of the commission, may be financially interested,
3 or have any beneficial personal interest, direct or indirect, in
4 any person furnishing video lottery terminals or video lottery
5 games, or in any person who is a bidder for video lottery
6 terminals, or who is a holder of a license issued under this
7 article.

8 (b) Neither the director of the commission, nor any member
9 or employee of the commission, may accept or receive, directly
10 or indirectly, from any person known by the director, commis-
11 sion member or employee of the commission to be interested in
12 any bid, contract or licensee under this article, by rebate, gift or
13 otherwise, any money or other thing of value whatsoever, or
14 any promise, obligation or contract for future reward, or
15 compensation.

16 (c) A person who violates this section shall be guilty of a
17 misdemeanor and, upon conviction thereof, shall be confined in
18 jail not less than three months nor more than one year, or fined
19 not less than fifty nor more than one thousand dollars, or both,
20 in the discretion of the court: Provided, That any person who
21 violates any of the provisions of subsection (b) of this section
22 under circumstances constituting the crime of bribery under the
23 provisions of section 61-5A-3 of this code, shall, upon convic-
24 tion of bribery, be punished as provided in article 61-5A-1, et
25 seq., of this code.

§29-22B-1702. Criminal penalties for unlawful inducement.

1 (a) Any person who gives another person any thing of value
2 to induce the other to refrain from bidding for a video lottery
3 permit is guilty of a misdemeanor and, upon conviction, shall
4 be fined not more than ten thousand dollars and, in addition,
5 shall be subject to a civil penalty payable to the commission of
6 five hundred thousand dollars.
(b) Any person who gives a person any thing of value to induce the other to refrain from placing a video lottery terminal at a restricted access adult-only facility is guilty of a misdemeanor and, upon conviction, shall be fined not more than ten thousand dollars and, in addition, shall be subject to a civil penalty payable to the commission of five hundred thousand dollars.

§29-22B-1703. Criminal penalty for unauthorized game on authorized video lottery terminal.

(a) A licensee who places a video lottery game on a video lottery terminal that is allowed under this article without authority of the commission to do so is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for a term of not more than one year, and fined not more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than ten thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

§29-22B-1704. Criminal penalty for unauthorized video lottery terminal.

(a) A licensee who places a video gambling machine into play is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for a term of not more than one year, and fined not less than
five thousand dollars nor more than ten thousand dollars, except that, in the case of a person other than an individual, the fine may not be less than twenty thousand dollars nor more than thirty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than ten thousand dollars nor more than twenty thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

§29-22B-1705. Criminal penalty for possession of video gambling machine.

(a) After December 31, 2001, any person who has a video gambling machine in their actual or constructive possession in this state is guilty of a felony and, upon conviction thereof, shall for a first conviction be confined in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than fifty thousand dollars nor more than one hundred thousand dollars, for each video gambling machine in the person’s actual or constructive possession in this state, except that, in the case of a person other than an individual, the fine may not be less than one hundred thousand dollars nor more than five hundred thousand dollars for each video gambling machine in the person’s actual or constructive possession in this state.

(b) For any second or subsequent conviction under this section the person shall be confined in a state correctional facility for a term of not less than two years nor more than five years, and fined not less than one hundred thousand dollars nor more than five hundred thousand dollars, for each video
gambling machine in their actual or constructive possession in this state, except that, in the case of a person other than an individual, the fine may not be less than five hundred thousand dollars nor more than one million dollars for each video gambling machine in the person's actual or constructive possession in this state.

§29-22B-1706. Criminal penalty for expired operator or limited video lottery retailer's license.

(a) A person who operates, carries on or exposes for play a video lottery game or video lottery terminal after the person's license has expired and prior to the actual renewal of the license is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail for not more than one year or fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may not be less than ten thousand dollars nor more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than ten thousand dollars nor more than twenty thousand dollars, except that in the case of a person other than an individual, the fine may not be less than twenty-five thousand dollars nor more than fifty thousand dollars.

§29-22B-1707. Criminal penalty for possession of altered or nonconforming video lottery terminal, device or related material.

(a) A person who possesses any video lottery terminal that is not a video gambling machine or possesses any other device, equipment or material which the person knows has been

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The text continues with additional regulations and penalties related to gaming activities.
manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail not more than one year and fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not less than five thousand dollars nor more than twenty-five thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that in the case of a person other than an individual, the fine may not be less than fifty thousand dollars nor more than one hundred thousand dollars.

§29-22B-1708. Criminal penalty for tampered game, terminal, device or other equipment.

(a) A person who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play, any video lottery game, video lottery terminal or other device, equipment or material which has in any manner been tampered with or placed in a condition or operated in a manner the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the video lottery game which could determine or alter the result of the game is guilty of a misdemeanor and, upon conviction thereof, shall for a first conviction be confined in a county or regional jail not more than one year and fined not less than one thousand dollars nor more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed
may be not less than twenty-five thousand dollars nor more than fifty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that in the case of a person other than an individual, the fine may be not less than fifty thousand dollars nor more than one hundred thousand dollars.

§29-22B-1709. Criminal penalty for deceptive practices.

(a) A person who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play, any video lottery game, video lottery terminal, data line connection with the central control computer, or other device, equipment or material which has in any manner been tampered with or placed in a condition or operated in a manner the result of which tends to deceive the state lottery commission or tends to alter the accurate recording of credits played and credits won by the commission’s central control computer, or the central control computer’s ability to disable and cause not to operate any or all video lottery terminals of a licensed limited video lottery retailer, for the first offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year and fined not more than five thousand dollars, except that, in the case of a person other than an individual, the amount of the fine imposed may be not more than fifty thousand dollars.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for at
least one year but not more than five years, and fined not less
than one thousand dollars nor more than five thousand dollars,
except that when the person is not an individual, the amount of
the fine imposed may be not less than five thousand dollars nor
more than fifty thousand dollars.

§29-22B-1710. Employment of unlicensed person who is required
to be licensed.

(a) A person who employs or continues to employ an
individual not issued a license under the provisions of this
article in a position with duties which would require a license
under the provisions of this article is guilty of a misdemeanor
and, upon conviction thereof, shall for a first offense be
confined in a county or regional jail for not more than one year
and fined not more than five thousand dollars, except that, in
the case of a person other than an individual, the amount of the
fine imposed may be not more than twenty-five thousand
dollars.

(b) A second and each subsequent offense under this
section shall be a felony and, upon conviction thereof, the
person shall be confined in a state correctional facility for a
term of not less than one year nor more than three years, and
fined not less than five thousand dollars nor more than
twenty-five thousand dollars, except that, in the case of a person
other than an individual, the fine may not be less than fifty
thousand dollars nor more than one hundred thousand dollars.

§29-22B-1711. Criminal penalty for unlicenced person to work in
a position for which license is required.

(a) An individual who is required by this article to obtain a
license from the commission to work as a limited video lottery
retailer or service technician but who works as a limited video
lottery retailer or service technician without obtaining the
requisite license, as provided for in this article, or is employed
in a position with duties which would require a license under the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail not more than one year and fined not more than ten thousand dollars.

(b) A second and each subsequent offense under this section shall be a misdemeanor and, upon conviction thereof, the person shall be confined in a county or regional jail for a term not to exceed one year and fined not less than five thousand dollars nor more than twenty thousand dollars.

§29-22B-1712. Criminal penalty for use of device that gives player an unauthorized advantage.

(a) A person who, while a video lottery game is being played, uses, or assists another person in the use of, an electronic, electrical or mechanical device which is designed, constructed or programmed specifically for use in obtaining an advantage at playing any video lottery game is guilty of a felony and, upon conviction thereof, shall for a first offense be confined in a state correctional facility for at least one year but not more than five years, or shall be fined not less than one thousand dollars nor more than five thousand dollars, or both.

(b) A second and each subsequent offense under this section shall be a felony and, upon conviction thereof, the person shall be confined in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than five thousand dollars nor more than twenty-five thousand dollars, except that, in the case of a person other than an individual, the fine may be not less than fifty thousand dollars nor more than one hundred thousand dollars.

§29-22B-1713. Criminal penalty for violation of rules of play.
A person who knowingly violates a provision of this article or the rules of play or game rules of a video lottery game, and who profits thereby in an amount equal to one thousand dollars or more, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in jail for not more than one year and be fined not less than two thousand dollars nor more than five thousand dollars.

If the person profits thereby in an amount less than one thousand dollars, that person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not less than one thousand dollars nor more than two thousand five hundred dollars, or both.

§29-22B-1714. Criminal penalty for corrupt combinations, collusions or conspiracies prohibited.

It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or leasing of video lottery terminals or associated equipment, or the provisions of services, or the bidding of authorizations to own or lease video lottery terminals. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility for a term of not less than one year nor more than five years, and be fined not less than ten thousand dollars nor more than twenty-five thousand dollars.

PART 18. SEIZURE AND DESTRUCTION OF CONTRABAND; FORFEITURES.

§29-22B-1801. Video gambling machines declared contraband.

Effective January 1, 2002, and thereafter, video gambling machines are per se illegal gambling devices which may be
seized and destroyed as illegal contraband by any law-enforcement agency having jurisdiction over the political subdivision in which the device is found, and the owner or owners of the device have no right to compensation for the seizure and destruction of any video gambling machine.

§29-22B-1802. Legislative findings regarding seizure and sale of video gambling machines and other property.

The Legislature hereby finds and declares that the seizure and sale of items under the provisions of this part 18 is not contemplated to be a forfeiture as the same is used in article 12, section 5 of the West Virginia Constitution and, to the extent that a seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article is not part of net proceeds as the same is contemplated by such article 12, section 5 of the West Virginia Constitution.

§29-22B-1803. Items subject to forfeiture.

(a) The following items are subject to forfeiture:

(1) Any video gambling machine present in this state after January 1, 2002;

(2) All property found with the video gambling machine that in any way facilitates its operation for any purpose;

(3) Any video lottery terminal registered under this article that is found on the premises where a video gambling machine is found;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, have been used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale,
receipt, possession or concealment of a video gambling machine, except as follows:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section unless it appears that the person owning such conveyance is a consenting party or privy to a violation of this article;

(B) No conveyance shall be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this article; and

(C) No bona fide security interest or other valid lien in any conveyance shall be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of such security interest or lien either knew, or had reason to know, that such conveyance was being used or was likely to be used in a violation of this article.

(5) All books, records and materials, including microfilm, tapes and data which are used, or have been used, or are intended for use with a gray gambling device;

(6) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this article by any person in exchange for a gray gambling device or in exchange for playing or operating a gray gambling device, all proceeds traceable to such an exchange, and all moneys, negotiable instruments and securities used, or which have been used, or which are intended to be used to facilitate any violation of this article: Provided, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission
established by that owner to have been committed or omitted without his or her knowledge or consent; and

(7) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit, or to facilitate the commission of a violation of this article punishable by more than one year imprisonment: Provided. That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent.

(b) The requirements of this section pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances thereto.

(c) Property subject to forfeiture under this section may be seized by any person granted law-enforcement powers (hereinafter referred to as the “appropriate person” in section 22B-1804).


(a) Seizure of property made subject to forfeiture by the provisions of sections 22B-1802 and 22B-1803 may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;
(2) The property subject to seizure has been the subject of
a prior judgment in favor of the state in a forfeiture proceeding
based upon this section; or

(3) The appropriate person has probable cause to believe
that the property was used or intended for use in violation of
this article.

(c) In the event of seizure pursuant to subsection (b) of this
section, forfeiture proceedings shall be instituted within ninety
days of the seizure thereof.

(d) Property taken or detained under this section shall not
be subject to replevin, but is deemed to be in the custody of the
appropriate person, subject only to the orders and decrees of the
court having jurisdiction over the forfeiture proceedings. When
property is seized under this article, the appropriate person
may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him or
her;

(3) Require the appropriate law-enforcement agency to take
custody of the property and remove it to an appropriate location
for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other
negotiable instruments, place the assets in any interest-bearing
depository insured by an agency of the federal government.

The requirements of this subsection (d), pertaining to the
removal of seized property, are not mandatory in the case of
real property and appurtenances thereto.

(a) The following procedures for forfeiture shall be followed:

(1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this section shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor;

(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made or the circuit court of the county wherein any owner of the property subject to forfeiture may reside;

(3) Any civil trial stemming from a petition for forfeiture brought under this part 18 at the demand of either party shall be by jury;

(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law-enforcement officer representing the law-enforcement agency responsible for the seizure or the prosecuting attorney and shall contain the following:

(A) A description of the property seized;

(B) A statement as to who is responsible for the seizure;

(C) A statement of the time and place of seizure;

(D) The identity of the owner or owners of the property, if known;
(E) The identity of the person or persons in possession of the property at the time seized, if known;

(F) A statement of facts upon which probable cause for belief that the seized property is subject to forfeiture pursuant to the provisions of this article is based;

(G) The identity of all persons or corporations having a perfected security interest or lien in the subject property, as well as the identity of all persons or corporations known to the affiant who may be holding a possessory or statutory lien against such property; and

(H) A prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state.

(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows:

“To any claimant to the within described property: You have the right to file an answer to this petition setting forth your title in, and right to possession of, the property within thirty days from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be entered, and such order is not subject to appeal.”
If no owner or possessors, lienholders or holders of a security interest be found, then such service may be made by Class II legal publication in accordance with the provisions of article 59-3-1, et seq., of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.

(c) In addition to the requirements of subsection (b) of this section, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article 59-3-1, et seq., of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition, such notice shall contain the following information:

1. A description of the property seized;
2. A statement as to who is responsible for the seizure;
3. A statement of the time and place of seizure;
4. The identity of the owner or owners of the property, if known;
5. The identity of the person or persons in possession of the property at the time of seizure, if known; and
(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state, shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this part 18.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state’s right, title and interest in the forfeited property and relates back to the date of seizure: Provided, That in any proceeding under this article the circuit court shall in its final order make specific findings with respect to whether or not probable cause to seize such property existed at the time of such seizure.

(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or holder of a bona fide security interest or other valid lien-holder to transfer or attempt to transfer any ownership interest or security interest in seized property with the intent to defeat the purpose of this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or holder of a security interest or other lien-holder from making such a transfer should one come to its attention. Any such transfer, that is made in violation of the
provisions of this subsection, shall have no effect upon an order of the court forfeiting seized property to the state if a notice of lis pendens is filed prior to the recording of the instrument of transfer.

(h) The court may void any transfer of property made before or after a forfeiture proceeding has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide purchaser without notice for value.

(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought pursuant to this part 18 must be filed within one hundred twenty days of the date of entry of the final appealable order. The appellant shall be required to give notice of intent to appeal within thirty days of the entry of such appealable order.

§29-22B-1806. Disposition of forfeited moneys, securities or other negotiable instruments.

(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this part 18, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding; and

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:
(1) In the case of the funds belonging to the West Virginia state police, the funds shall only be expended at the direction of the superintendent and in accordance with the provisions of section 5A-2-15 and subsection 12-2-2(j) of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections 7-5-4 and 5 of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section 8-13-22 of this code.

§29-22B-1807. Disposition of other forfeited property; distribution of proceeds.

(a) When property other than that referred to in section 22B-1806 of this part is forfeited under this section, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the law-enforcement agency that seized said forfeited property, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning; or

(2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article 59-3-1, et seq., of this code. The publication area shall be the county where the public auction will be held.
(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after distribution pursuant to this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding; and

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property sold and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the chief of the law-enforcement agency may deem appropriate; however, these funds may not be utilized for regular operating needs.
(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section, among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection 60A-7-705(b), of this code.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this part 18 shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No
county or municipality may use anticipated receipts of forfeited property in their budgetary process.

(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to this section.

(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this part 18, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section 58-4-7 of this code.

(l) The special law-enforcement investigative funds of each law-enforcement agency may be placed in an interest-bearing depository insured by the federal government.

PART 19. MISCELLANEOUS PROVISIONS.

§29-22B-1901. Effect of this article on certain taxes.
(a) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, persons who hold a current operator’s license or a current limited video lottery retailer’s license issued under this article shall be exempt from paying the taxes imposed by articles 11-15-1, et seq., and 11-15A-1, et seq., of this code on their purchases of video lottery terminals and video lottery games.

(b) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, the consideration paid by a patron of a restricted access adult-only facility to play video lottery games shall be exempt from the tax imposed by article 11-15-1, et seq., of this code.

(c) Notwithstanding the provisions of section 8-13-4 of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the license fees imposed by this article on manufacturers, operators, limited video lottery retailers and service technicians. Municipalities may continue to impose any other license fees they are allowed to impose under this code.

(d) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code, or an amusement tax imposed pursuant to section 8-13-6 of this code on the income of a permittee of video lottery terminals from income derived directly from activities conducted pursuant to the provisions of this article.

(e) Notwithstanding any provision of this code to the contrary, effective the first day of July, 2002, municipalities may not impose the municipal business and occupation taxes imposed pursuant to section 8-13-5 of this code on payments a limited video lottery retailer receives from an operator of video
lottery terminals for activities conducted pursuant to the provisions of this article.

§29-22B-1902. Preemption of state laws or local regulation.

(a) No state or local law or regulation providing any penalty, disability, restriction, regulation or prohibition for the manufacture, transportation, storage, distribution, advertising, possession or sale of any lottery video lottery terminal, games or materials or for the operation of any lottery shall apply to operations by the lottery commission or persons licensed pursuant to this article or operations or activities that are authorized in this article.

(b) The provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict herewith: Provided, That nothing herein shall invalidate any zoning law, or Sunday closing law under article 61-10-1, et seq., of this code.

(c) Nothing in this article shall be deemed to permit the operation of any lottery otherwise prohibited by the laws of this state, not owned and operated by this state and permitted by this article.

§29-22B-1903. Timing of implementation.

The Legislature finds and declares that the success of this state’s implementation of video lottery operations under this article requires that the operations be phased in over a manageable transition period designed to allow careful regulation and control of the implementation of operations under this article and also to allow persons possessing devices that are declared by this article to be contraband gambling devices a reasonable opportunity to remove any existing devices from this state.
AN ACT to amend and reenact sections nine and thirteen, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to racetracks; distributing proceeds from the purse fund to provide funds for pension plan for West Virginia thoroughbred racetrack backstretch personnel and their dependents; and distributing funds from unredeemed pari-mutuel tickets to provide funds for health and disability benefits for eligible active or disabled West Virginia jockeys and their dependents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.
§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by the licensee within the confines of the licensee’s horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee’s racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission, as is mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-
mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders, awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.

Each licensee that permits or conducts pari-mutuel wagering at the licensee’s thoroughbred horse racetrack shall annually pay five hundred thousand dollars from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the racing commission for transfer to a pension plan established by the racing commission for all back-stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable
forepersons licensed by the racing commission to participate in horse racing in this state and their dependents.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of the pari-mutuel pools; and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of the fund shall be eleven and twenty-five one-hundredths percent of the pari-mutuel pools; and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of the pari-mutuel pools; (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders’ awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-
tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of the pools; and (iv) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.

The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid into the special fund established by the licensee under the provisions of this subdivision. The racing commission shall promulgate any reasonable rules that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund. The remainder of the commission shall be retained by the licensee.
(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty one-hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent, and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions are in effect for the fiscal years one thousand nine hundred ninety and one thousand nine hundred ninety-one. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of the commissions, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article and one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located. In addition, out of the commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state road fund for use by the division of highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, "municipality" means and includes any Class I, Class II and Class III city and any Class
168 IV town or village incorporated as a municipal corporation
169 under the laws of this state prior to the first day of January, one
170 thousand nine hundred eighty-seven.

171 Each dog racing licensee, when required by the provisions
172 of this subdivision to pay a percentage of its commissions to the
173 state road fund for use by the division of highways, shall
174 transmit the required funds, in such manner and at such times
175 as the racing commission shall by procedural rule direct, to the
176 state treasurer for deposit in the state treasury to the credit of
177 the division of highways state road fund. All funds collected
178 and received in the state road fund pursuant to the provisions of
179 this subdivision shall be used by the division of highways in
180 accordance with the provisions of article seventeen-a, chapter
181 seventeen of this code for the acquisition of right-of-way for,
182 the construction of, the reconstruction of and the improvement
183 or repair of any interstate or other highway, secondary road,
184 bridge and toll road in the state. If on the first day of July, one
185 thousand nine hundred eighty-nine, any area encompassing a
186 dog racetrack has incorporated as a Class I, Class II or Class III
187 city or as a Class IV town or village, whereas such city, town or
188 village was not incorporated as such on the first day of January,
189 one thousand nine hundred eighty-seven, then on and after the
190 first day of July, one thousand nine hundred eighty-nine, any
191 balances in the state road fund existing as a result of payments
192 made under the provisions of this subdivision may be used by
193 the state road fund for any purpose for which other moneys in
194 the fund may lawfully be used, and in lieu of further payments
195 to the state road fund, the licensee of a racetrack which is
196 located in the municipality shall thereafter pay three tenths of
197 one percent of the pari-mutuel pools into the general fund of the
198 municipality. If no incorporation occurs before the first day of
199 July, one thousand nine hundred eighty-nine, then payments to
200 the state road fund shall thereafter continue as provided for
201 under the provisions of this subdivision.
A dog racing licensee, before deducting the commissions authorized by this subdivision, shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for the commissions. The racing commission shall prescribe blank forms for filing the notification. The notification shall disclose the following: (A) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple betting; (B) the dates to be included in the revised betting; (C) such other information as may be required by the racing commission.

The licensee shall establish a special fund to be used only for capital improvements or long-term debt amortization or both: Provided, That any licensee, heretofore licensed for a period of eight years prior to the effective date of the amendment made to this section during the regular session of the Legislature held in the year one thousand nine hundred eighty-seven, shall establish the special fund to be used only for capital improvements or physical plant maintenance, or both, at the licensee's licensed facility or at the licensee's commonly owned racing facility located within this state. Deposits made into the funds shall be in an amount equal to twenty-five percent of the increased rate total over and above the applicable rate in effect as of the first day of January, one thousand nine hundred eighty-seven, of the pari-mutuel pools for the day. Any amount deposited into the funds must be expended or liability therefor incurred within a period of two years from the date of deposit. Any funds not expended shall be transferred immediately into the state general fund after expiration of the two-year period.

The licensee shall make a deposit into a special fund established by the licensee and used for payment of regular purses offered for dog racing, which deposits out of the
licensee’s commissions for each day shall be three and seventy-five one-hundredths percent of the pari-mutuel pools.

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; the funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven of the total pari-mutuel pools for the day.

The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision. The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the division of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization and a certified statement of the financial condition of any licensee depositing into the fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may consider appropriate for review.

(c) In addition to any commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime, and from the breakage, the licensee of a horse race meeting (excluding dog race meetings), shall deposit daily fifty percent of the total of the breakage retained by the licensee into the special fund created pursuant to the provisions of subdivision (1), subsection (b) of this section for the payment of regular purses.
(d) The director of audit, and any other auditors employed by the racing commission who are also certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to the pari-mutuel system of wagering and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that the individual is under the age of eighteen years.

(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the municipal general fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses
(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the commission a surety bond in an amount to be determined by the commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets.” Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of the notice. The notice shall be published within fifteen days following the receipt of the outstanding and
unredeemed pari-mutuel ticket moneys by the commission from
the licensee as a Class I legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code,
and the publication area for the publication shall be the county
in which the horse or dog race meeting was held and the county
in which the televised racing day wagering was conducted in
this state.

(b) Any outstanding and unredeemed pari-mutuel tickets
that are not presented for payment within ninety days from the
date of the publication of the notice are thereafter irredeemable,
and the moneys theretofore held for the redemption of the pari-
mutuel tickets shall become the property of the racing commis-
sion and shall be expended as provided in this subsection. The
racing commission shall maintain separate accounts for each
licensee and shall record in each separate account the moneys
turned over by the licensee and the amount expended at the
licensee’s track for the purposes set forth in this subsection. The
moneys in the West Virginia racing commission special account
- unredeemed pari-mutuel tickets shall be expended as follows:

(1) To the owner of the winning horse in any horse race at
a horse race meeting held or conducted by any licensee:
Provided, That the owner of the horse is at the time of the horse
race a bona fide resident of this state, a sum equal to ten percent
of the purse won by the horse at that race. The commission may
require proof that the owner was, at the time of the race, a bona
fide resident of this state. Upon proof by the owner that he or
she filed a personal income tax return in this state for the
previous two years and that he or she owned real or personal
property in this state and paid taxes in this state on real or
personal property for the previous two years, he or she shall be
presumed to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare) of the
winning horse in any horse race at a horse race meeting held or
conducted by any licensee: *Provided*, That the mare foaled in this state, a sum equal to ten percent of the purse won by the horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the mare which foaled the winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by the horse; and

(4) To those horse racing licensees not participating in the thoroughbred development fund authorized in section thirteen-b of this article, the unexpended balance of the licensee's account not expended as provided in subdivisions (1), (2) and (3) of this subdivision: *Provided*, That all moneys distributed under this subdivision shall be expended solely for capital improvements at the licensee's track: *Provided, however*, That the capital improvements must be approved, in writing, by the West Virginia racing commission before funds are expended by the licensee for that capital improvement; and

(5) When the moneys in the special account, known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets will more than satisfy the requirements of subdivisions (1), (2), (3) and (4) of this subsection, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: *Provided*, That subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2), (3) and (4) of this subsection have been satisfied:
(A) Transfer annually two hundred thousand dollars to the West Virginia racing commission special account - West Virginia greyhound breeding development fund;

(B) Transfer annually two hundred thousand dollars into a separate account to be used for stakes races for West Virginia bred greyhounds at dog racetracks; and

(C) Transfer annually two hundred thousand dollars to a trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to a legislative rule proposed for promulgation by the commission and authorized by the Legislature, as the representative of the majority of the active jockeys in West Virginia, for the purpose of providing health and disability benefits to eligible active or disabled West Virginia jockeys and their dependents in accordance with eligibility criteria established by said organization. For purposes of this section in determining health benefits, an eligible active jockey is one who rides at least one hundred mounts per calendar year of which fifty-one must be in the state of West Virginia: Provided, That a jockey is not eligible for health benefits if he or she receives health benefits from any other state; and

(D) After all payments to satisfy the requirements of (A), (B) and (C) of this proviso have been satisfied, the commission shall have authority to transfer one hundred fifty thousand dollars left from all uncashed pari-mutuel tickets to the trust maintained and administered by the organization which is recognized by the West Virginia racing commission, pursuant to legislative rule proposed for promulgation by the commission and authorized by the Legislature as the representative of the majority of the active jockeys in West Virginia.

(c) The commission shall submit to the legislative auditor a quarterly report and accounting of the income, expenditures
and unobligated balance in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.

(d) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid awards or for awards under section thirteen-b of this article.

(e) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools’ tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

CHAPTER 8

(S. B. 1003 — By Senators Plymale and Tomblin, Mr. President)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, 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; and providing for an allocation of aggregate premium percentages between employers and employees in the financial plans of the agency.

Be it enacted by the Legislature of West Virginia:

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

(a) The purpose of the finance board created by this article is to bring fiscal stability to the public employees insurance agency through development of annual financial plans and long-range plans designed to meet the agency’s estimated total financial requirements, taking into account all revenues projected to be made available to the agency, and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the governor and to the Legislature without the actuary’s written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary’s opinion on the financial plan for each fiscal year shall allow for no more than
thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

1. Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;

2. Any necessary cost containment measures for implementation by the director;

3. The levels of premium costs to participating employers;

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

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

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.
(d)(1) The finance board shall prepare an annual financial plan for each fiscal year during which the finance board remains in existence. The finance board chairman shall request the actuary to estimate the total financial requirements of the public employees insurance agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The proposed financial plan shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary’s report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

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

(4) Any financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each fiscal year, the governor shall provide his or her estimate of total revenues to the finance board no later than the fifteenth day of October of the preceding fiscal year: Provided, That, for the prospective financial plans required by this
section, the governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary’s opinion and conducting one or more public hearings in each congressional district, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: Provided, however, That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

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

(f) Beginning on the first day of January, two thousand, and every year thereafter, the finance board shall submit to the governor and the Legislature a prospective financial plan, for a period not to exceed five years, for the programs provided for in this article. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision
(4), subsection (d) of this section and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Beginning in the plan year which commences on the first day of July, two thousand two, and in each plan year thereafter, until and including the plan year which commences on the first day of July, two thousand six, the prospective plans shall include incremental adjustments toward the ultimate level required in this subsection, in the aggregate cost-sharing percentages of premium between employers and employees. Effective in the plan year commencing on the first day of July, two thousand six, and in each plan year thereafter, the aggregate premium cost-sharing percentages between employers and employees shall be at a level of eighty percent for the employer and twenty percent for employees, except for the employers provided for in subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles and copays for employees, except in the event of a true emergency as provided for in this section: Provided, That if the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: Provided, however, That for purposes of this section, “emergency” means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year.

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

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

CHAPTER 9

(S. B. 1002 — By Senators Tomblin, Mr. President, Craigo, Plymale,
Jackson, Prezioso, Unger, Snyder, McCabe, Anderson, Helmick,
Wooton, Chafin, Bailey, Fanning, Edgell, Kessler, Minard, Sharpe,
Ross, Mitchell, Hunter, Rowe, Love, Caldwell, Oliverio, McKenzie,
Redd, Burnette, Boley, Deem, Minear and Facemyer)

[Passed April 23, 2001; in effect from passage. Approved by the Governor.]

AN ACT to amend article seven-a, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section twenty-six-s,
relating to the teachers retirement system; providing a one-time
supplement to the retirement benefit of certain annuitants; and
specifying eligibility criteria therefor.

Be it enacted by the Legislature of West Virginia:

That article seven-a, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended by adding thereto a new section, designated section twenty-
six-s, to read as follows:
ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26s. One-time supplement for certain annuitants effective July 1, 2001.

(a) A one-time supplement to retirement benefits shall be provided to retirees of this system who have: (i) Reached the specified age threshold; and (ii) have been in retirement status for the specified number of years, as follows:

(1) For retirees who, as of the first day of July, two thousand one, are at least sixty-five years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal five percent of his or her annuity benefit as of the effective date of this section;

(2) For retirees who, as of the first day of July, two thousand one, are at least seventy years of age and who have been an annuitant for at least five consecutive years, this one-time supplement shall equal ten percent of his or her annuity benefit as of the effective date of this section; and

(3) For any person who, as of the first day of July, two thousand one, is at least sixty-five years of age and who retired under the early retirement incentive provided in section thirty-five-b of this article, this one-time supplement shall equal three percent of his or her annuity benefit as of the effective date of this section and subdivisions (1) and (2) of this subsection do not apply.

(b) The one-time supplement provided for in this section applies only to members who have retired prior to or as of the effective date of this section or, if applicable, to beneficiaries receiving benefits under the retirement system prior to or as of the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.
AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section ten, all relating to continuing the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

§24-1-10. Termination of commission.

§24-1-3. Commission continued; membership; chairman; compensation.

1 (a) The public service commission of West Virginia is continued and directed as provided by this chapter, chapter twenty-four-a, chapter twenty-four-b and chapter twenty-four-d of this code. After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the
Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section five, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, two thousand three. The public service commission may sue and be sued by that name. The public service commission shall consist of three members who shall be appointed by the governor, with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, with not less than ten years' actual work experience in the legal profession as a member of a state bar. No more than two of the commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the constitution of this state. The oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired terms of members of the public service commission at the time this subsection becomes effective are continued. Upon expiration of the terms, appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter or holding any stocks or bonds of a public utility
subject to the provisions of this chapter or who is pecuniarily interested in a public utility subject to the provisions of this chapter may serve as a member of the commission or as an employee of the commission. Nor may any commissioner be a candidate for or hold public office or be a member of any political committee while acting as a commissioner; nor may any commissioner or employee of the commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him or her from office and shall appoint a new commissioner to fill the vacancy created.

(d) The salaries of members of the public service commission and the manner in which they are paid established by the prior enactment of this section are continued. Effective the first day of July, two thousand one the annual salary of each commissioner provided in section two-a, article seven, chapter six of this code shall be paid in monthly installments from the special funds in the percentages that follow:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, eighty percent;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seventeen percent; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, three percent.

In addition to the salary provided for all commissioners in section two-a, article seven, chapter six of this code, the
73 chairman of the commission shall receive five thousand dollars
74 per annum to be paid in monthly installments from the public
75 service commission fund collected under the provisions of
76 section six, article three of this chapter.

§24-1-10. Termination of commission.

1 The public service commission shall terminate on the first
2 day of July, two thousand three, pursuant to the provisions of
3 article ten, chapter four of this code unless sooner terminated,
4 continued or reestablished pursuant to the provisions of that
5 article.

CHAPTER 11

(S. B. 1001 — By Senators Tomblin, Mr. President, and Sprouse,
Br Request of the Executive)

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

AN ACT to repeal section sixteen, article fourteen, chapter eleven of
the code of West Virginia, one thousand nine hundred thirty-one,
as amended; and to amend and reenact section three of said
article, relating to extending the termination date of the extra five
cents a gallon gas tax; requiring annual report to the Legislature;
and providing for confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.
§11-14-3. Imposition of tax.

There is hereby levied an excise tax of fifteen and one-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as hereinafter prescribed in this article: Provided, That beginning the first day of May, one thousand nine hundred ninety-three, the tax levied by this article shall be twenty and one-half cents per gallon: Provided, however, That on and after the first day of August, two thousand seven, the tax levied by this article shall be fifteen and one-half cents per gallon.

Beginning on the fifteenth day of January, two thousand three, and every fifteenth day of January thereafter, the tax commissioner shall submit to the Legislature an annual report identifying the amount of revenue collected from the imposition of the tax imposed by this section in each county of this state via sales at each individual retail gas pump during the preceding fiscal year. Notwithstanding any provision of this code to the contrary, all information individually made available to the tax commissioner by a taxpayer that is utilized in the preparation of the report to the Legislature required by this section is confidential and may not be disclosed to any person in any manner inconsistent with any law of this state protecting the confidentiality of taxpayer returns filed pursuant to this article.

CHAPTER 12

(S. B. 1005 — By Senators Tomblin, Mr. President, and Sprouse, Br Request of the Executive)

[Passed April 23, 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-b; to amend article two-d of said chapter by adding thereto a new section, designated section four-b; to amend and reenact sections three and seven, article twenty-nine-a of said chapter; and to amend and reenact section nine-a, article twenty-two, chapter twenty-nine of said code, all relating generally to use of lottery proceeds; providing for the sale of revenue bonds by the hospital finance authority to fund one or more skilled nursing facilities that are constructed, equipped, staffed and operated by the director of the division of veterans’ affairs to house and serve veterans of the United States armed forces who are citizens of the state; exempting the facilities from the certificate of need provisions; and redefining terms.

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-b; that article two-d of said chapter be amended by adding thereto a new section, designated section four-b; that sections three and seven, article twenty-nine-a of said chapter be amended and reenacted; and that section nine-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Chapter
29. Miscellaneous Boards and Offices.

CHAPTER 16. PUBLIC HEALTH.

Article
1B. Skilled Nursing Facilities for Veterans of the United States Armed Forces.
2D. Certificate of Need.
29A. West Virginia Hospital Finance Authority Act.
ARTICLE 1B. SKILLED NURSING FACILITIES FOR VETERANS OF THE UNITED STATES ARMED FORCES.

§16-1B-1. Legislative findings.
§16-1B-2. Construction, staffing and operation of one or more skilled nursing facilities for veterans of the armed forces of the United States.
§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.

§16-1B-1. Legislative findings.

The Legislature finds that the health and welfare of the veterans of the armed forces who are citizens of our state will be best served by the establishment of one or more skilled nursing facilities exclusively for these veterans. Furthermore, the Legislature finds that nearly two hundred thousand veterans in this state have distinguished themselves with the highest level of participation per capita of any state in the wars fought by this nation. Further, an aging veterans' population which suffers from wartime disabilities and illnesses are, or will be, in need of skilled nursing care.

§16-1B-2. Construction, staffing and operation of one or more skilled nursing facilities for veterans of the armed forces of the United States.

The director of veterans affairs shall establish, construct, equip and operate one or more skilled nursing facilities to serve the needs of citizens of this state who are veterans of the armed forces of the United States. For each nursing facility established, the director shall appoint a facility administrator and other employees as are necessary to maintain the facility and deliver quality care to residents of the facility.

§16-1B-3. Issuance of bonds by the hospital finance authority; payment of bonds from net profits of the veterans lottery instant scratch-off game.
The director shall request that revenue bonds, not exceeding
the principal amount of ten million dollars, be issued by the
West Virginia hospital finance authority under provisions of
section seven, article twenty-nine-a of this chapter. Net profit
from the veterans lottery instant scratch-off game as authorized
by section nine-a, article twenty-two, chapter twenty-nine of
this code and other revenues that the Legislature may from time
to time appropriate shall pay the principal and interest obliga-
tions of the bonds.

§16-1B-4. Eligibility for service; legislative rule.

In order to qualify for service and residency in a skilled
nursing facility established under this article, an applicant must
have continuously been a citizen of the state of West Virginia
for twelve consecutive months and must have performed active
duty in an active component of the armed forces or performed
active service in a reserve component of the armed forces for at
least twelve consecutive months. The director shall propose a
legislative rule further defining and limiting eligibility for
services and residency under this article.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-4b. Certificate of need; exemption for veterans skilled
nursing facility construction, operation and
maintenance.

Notwithstanding any provision of this article and any rule
issued by the state agency, a certificate of need is not required
for the construction, renovation, maintenance or operation of
one or more state veterans skilled nursing facilities established
pursuant to the provisions of article one-b of this chapter.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-3. Definitions.


§16-29A-3. Definitions.
As used in this article, unless the context clearly requires a different meaning:

(1) “Authority” means the West Virginia hospital finance authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;

(2) “Board” means the West Virginia hospital finance board created by section four of this article, which shall manage and control the authority;

(3) “Bond” means a revenue bond issued by the authority to effect the purposes of this article;

(4) “Construction” means and includes new construction, reconstruction, enlargement, improvement and providing furnishings or equipment;

(5) “Direct provider of health care” means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician’s assistant or an organization comprised of these health professionals or employing these health professionals;

(6) “Hospital” means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state-owned or operated establishment and specifically includes nursing homes which are licensed under chapter sixteen of this code or those facilities certified under the Social Security Act as intermediate care facilities for the mentally retarded;

(7) “Hospital facilities” means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses’, doctors’ or interns’ residences; administration buildings; facilities for research directly involved with hospital
care; maintenance, storage or utility facilities; parking lots and
garages; and all necessary, useful or related equipment,
furnishings and appurtenances and all lands necessary or
convenient as a site for the foregoing and specifically includes
any capital improvements to any of the foregoing. “Hospital
facilities” specifically includes office facilities not less than
eighty percent of which are intended for lease to direct provid-
ers of health care and which are geographically or functionally
related to one or more other hospital facilities, if the authority
determines that the financing of the office facilities is necessary
to accomplish the purposes of this article;

(8) “Hospital loan” means a loan made by the authority to
a hospital and specifically includes financings by the authority
for hospital facilities pursuant to lease-purchase agreements,
installment sale or other similar agreements;

(9) “Note” means a short-term promise to pay a specified
amount of money, payable and secured as provided pursuant to
this article and issued by the authority to effect the purposes of
this article;

(10) “Project costs” means the total of the reasonable or
necessary costs incurred for carrying out the works and
undertakings for the acquisition or construction of hospital
facilities under this article. “Project costs” includes, but is not
limited to, all of the following costs: The costs of acquisition or
construction of the hospital facilities; studies and surveys;
plans, specifications, architectural and engineering services;
legal, organization, marketing or other special services;
financing, acquisition, demolition, construction, equipping and
site development of new and rehabilitated buildings; rehabilita-
tion, reconstruction, repair or remodeling of existing buildings;
interest and carrying charges during construction and before full
earnings are achieved and operating expenses before full
earnings are achieved or a period of one year following the
completion of construction, whichever occurs first; and a
reasonable reserve for payment of principal of and interest on
bonds or notes of the authority. “Project costs” shall also
include reimbursement of a hospital for the foregoing costs
expended by a hospital from its own funds or from money borrowed by the hospital for such purposes before issuance and delivery of bonds or notes by the authority for the purpose of providing funds to pay the project costs. “Project costs” also specifically includes the refinancing of any existing debt of a hospital necessary in order to permit the hospital to borrow from the authority and give adequate security for the hospital loan. The determination of the authority with respect to the necessity of refinancing and adequate security for a hospital loan is conclusive;

(11) “Revenue” means any money or thing of value collected by, or paid to, the authority as principal of or interest, charges or other fees on hospital loans or any other collections on hospital loans made by the authority to hospitals to finance, in whole or in part, the acquisition or construction of any hospital facilities or other money or property which is received and may be expended for or pledged as revenues pursuant to this article;

(12) “Veterans skilled nursing facility” means a skilled nursing care facility constructed and operated to serve the needs of veterans of the armed forces of the United States who are citizens of this state.


(a) The authority periodically may issue its negotiable bonds and notes in a principal amount which, in the opinion of the authority, shall be necessary to provide sufficient funds for the making of hospital loans, including temporary loans during the construction of hospital facilities, for the payment of interest on bonds and notes of the authority during construction of hospital facilities for which the hospital loan was made and for a reasonable time thereafter and for the establishment of reserves to secure those bonds and notes.

(b) The authority periodically may issue renewal notes, may issue bonds to pay notes and, if it considers refunding expedient, to refund or to refund in advance bonds or notes issued by
the authority by the issuance of new bonds pursuant to the
requirements of section thirteen of this article.

(c) The authority may, upon concurrent resolution passed
by the Legislature, authorize the issuance of negotiable bonds
and notes in a principal amount which are necessary to provide
sufficient funds for the construction, reconstruction, renovation
and maintenance of one or more skilled nursing facilities that
will only serve the skilled nursing needs of West Virginia
veterans who have performed active duty in an active compo-
nent of the armed forces or performed active service in a
reserve component of the armed forces. These bonds issued by
the authority may not exceed ten million dollars. The revenues
pledged for the repayment of principal and interest of these
bonds shall include the net profit of the veterans instant lottery
scratch-off game authorized by section nine-a, article twenty-
two, chapter twenty-nine of this code.

(d) Except as may otherwise be expressly provided by the
authority, every issue of its notes or bonds shall be special
obligations of the authority, payable solely from the property,
revenues or other sources of or available to the authority
pledges therefor.

(e) The bonds and the notes shall be authorized by resolu-
tion of the authority, shall bear the date and shall mature at time
or times, in the case of any such note or any renewals thereof,
not exceeding seven years from the date of issue of the original
note and in the case of any bond not exceeding fifty years from
the date of issue, as the resolution may provide. The bonds and
notes shall bear interest at rate or rates, be in a denomination,
be in a form, either coupon or registered, carry registration
privileges, be payable in the medium of payment and at place
or places and be subject to the terms of redemption as the
authority may authorize. The bonds and notes of the authority
may be sold by the authority, at public or private sale, at or not
less than the price the authority determines. The bonds and
notes are executed by the chairman and vice chairman of the
board, both of whom may use facsimile signatures. The official
seal of the authority or a facsimile thereof shall be affixed to or
printed on each bond and note and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached to any bond or note shall bear the signature or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be an officer before delivery of the bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until the delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on the bonds or notes, the facsimile seal will continue to be sufficient for all purposes.

(f) A resolution authorizing bonds or notes or an issue of bonds or notes under this article may contain provisions, which are a part of the contract with the holders of the bonds or notes, as to any or all of the following:

(1) Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the authority, all or any part of the moneys received in payment of hospital loans and interest on hospital loans and all or any part of other moneys received or to be received, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

(2) Pledging and creating a lien on all or any part of the assets of the authority, including notes, deeds of trust and obligations securing the assets, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

(3) Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;
(4) The use and disposition of the income from hospital loans owned by the authority and payment of the principal of and interest on hospital loans owned by the authority;

(5) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(6) Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(7) Limitations on the issuance of additional bonds or notes and the terms upon which additional bonds or notes may be issued and secured;

(8) The procedure by which the terms of a contract with the bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which the consent may be given; and

(9) Vesting in a trustee or trustees the property, rights, powers, remedies and duties which the authority considers necessary or convenient.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9a. Veterans instant lottery scratch-off game.

(a) Beginning the first day of September, two thousand, the commission shall establish an instant lottery scratch-off game designated as the veterans benefit game, which is offered by the lottery.

(b) Notwithstanding the provisions of section eighteen of this article, and subject to the provisions of subsection (d) of this section, all net profits received from the sale of veterans benefit game lottery tickets, materials and games are deposited with the state treasurer into the veterans lottery fund created
under this section, and the Legislature may make appropriations from this fund for payment of principal and interest for revenue bonds issued under provisions of section seven, article twenty-nine-a, chapter sixteen of this code: **Provided,** That once the payment of the principal and interest is paid in full for the construction of the initial veterans skilled nursing facility, the Legislature may appropriate from the fund created under this section moneys for the construction, equipping and operation of additional skilled nursing facilities for veterans of the armed forces of the United States military: **Provided, however,** That after the payment of the above-mentioned items, the Legislature may appropriate any excess funds to the general revenue fund.

(c) Before appropriation of any of the net profits derived from the veterans benefit game for the uses set forth in this section, the Legislature shall first determine that the state has met all debt obligations for which lottery profits have been pledged for that fiscal year.

(d) There is hereby created in the state treasury a special revenue fund designated and known as the veterans lottery fund which shall consist of all revenues derived from the veterans benefit game, any appropriations to the fund by the Legislature and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. Revenues received by the veterans lottery fund shall be deposited in the West Virginia consolidated investment pool with the West Virginia investment management board, with the interest income a proper credit to all these funds.

(e) The commission shall change the design or theme of the veterans benefit game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to benefit veterans in this state.
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 - civil contingent fund, fund 0105, 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 a statement of the state fund, general revenue, dated June 10, 2001, setting forth therein the cash balance 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 statement 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 0105, fiscal year 2001, organization 0100, be supplemented and amended by increasing the total appropriation by two million fifty-one thousand 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 General
9 Activity
10 Revenue
11 Funds
12 1 Civil Contingent Fund —
13 1a Total — Surplus (R) ............ 238 $ 2,051,000
14 The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand one, by increasing the existing appropriation for Civil Contingent Fund - Total by two million fifty-one thousand dollars for expenditure during the fiscal year two thousand one.
CHAPTER 2

(H. B. 302 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

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

AN ACT to amend and reenact section nine, title two, chapter one, acts of the Legislature, first extraordinary session, two thousand one, relating to making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution making appropriations from surplus accrued certain amounts within the general revenue fund.

Be it enacted by the Legislature of West Virginia:

That section nine, title two, chapter one, acts of the Legislature, first extraordinary session, two thousand one, be amended and reenacted to read as follows:

Sec. 9. Appropriations from surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2002 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand one, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, two thousand one, from the fiscal year ending the thirtieth day of June two thousand one.

In the event that surplus revenues available on the thirty-first day of July, two thousand one, are not sufficient to
meet all the appropriations made pursuant to this section, then
the appropriations shall be made to the extent that surplus funds
are available as of the date mandated, and shall be allocated
first to provide the necessary funds to meet the first appropria-
tion of this section; next, to provide the funds necessary for the
second appropriation of this section; and subsequently to
provide the funds necessary for each appropriation in success-
ion before any funds are provided for the next subsequent
appropriation.

316—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2002 Org 0201

1 Salary Shortfall - Surplus ............ 497 $ 864,000

The appropriation for Salary Shortfall - Surplus shall be
allocated by the Secretary of Administration to those agencies
within the general revenue fund whose appropriations for
“Personal Services” and “Employee Benefits” or other appro-
priate items of appropriation are insufficient to comply with the
salary increase provision of HB 102 as determined by the state
budget office.

317—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2002 Org 0100

1 Civil Contingent Fund - Total
2 Surplus ......................... 238 $ 3,835,000
Total TITLE II, Section 9—

Surplus Accrued .................. $ 4,699,000

The purpose of this supplementary appropriation bill is to amend and reenact section nine, title two, chapter one, acts of the Legislature, first extraordinary session, two thousand one, relating to making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution making appropriations from surplus accrued certain amounts within the general revenue fund.

CHAPTER 3

(H. B. 303 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 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 balance in the state fund, general revenue, to the higher education policy commission - funding priorities - control account, fund 0591, fiscal year 2002, organization 0477, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated June 10, 2001, setting forth therein the cash balance 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 further included the estimate of revenues for the fiscal year
2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; 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 two, to fund 0591, fiscal year 2002, organization 0477, be supplemented and amended to hereafter read as follows:

<table>
<thead>
<tr>
<th>TITLE II — APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1. Appropriations from general revenue.</strong></td>
</tr>
<tr>
<td>HIGHER EDUCATION POLICY COMMISSION</td>
</tr>
<tr>
<td><strong>Funding Priorities</strong></td>
</tr>
<tr>
<td><strong>Control Account</strong></td>
</tr>
<tr>
<td>(WV Code Chapter 18B)</td>
</tr>
<tr>
<td>Fund 0591 FY 2002 Org 0477</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act-</td>
</tr>
<tr>
<td>ivity</td>
</tr>
<tr>
<td><strong>Peer Equity and Sustained</strong></td>
</tr>
<tr>
<td><strong>Quality Support</strong></td>
</tr>
</tbody>
</table>

| Peer Equity and Sustained | 489 | $9,200,000 |
The West Virginia Legislature reaffirms its commitment to the spirit, intent, and goals of the Compact with Higher Education as outlined in Senate Bill 653, as passed during the 2000 Regular Session. The Legislature recognizes the continued need to provide improved access to postsecondary education for all of West Virginia’s citizens in order to diversify and expand the economy of the state, and increase the competitiveness of the workforce.

The above appropriation for research challenge shall only be expended to match corporate, foundation, or public participation in research projects.

The above appropriation shall be allocated only to the State’s post-secondary institutions with compacts approved by the Higher Education Policy Commission, as stated in §18B-1A-5.

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 two, by increasing the existing item of appropriation for peer equity and sustained quality support by two million two hundred thousand dollars; by increasing the existing item of appropriation for independently accredited community and technical college development by one million dollars; and by adding one million dollars to a new item of appropriation for research challenge, for expenditure during the fiscal year two thousand two.
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, as originally appointed by chapter one, acts of the Legislature, first extraordinary session, two thousand one, 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 military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 61—Division of Corrections—

6 Correctional Units
(WV Code Chapters 25, 28, 49 and 62)

Fund 0450 FY 2002 Org 0608

And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2002, organization 0608, be amended and increased in the line item as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

61—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2002 Org 0608
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 Payments to Counties and/or Regional Jails is reduced by three million six hundred thirty-one thousand five hundred dollars. The item for unclassified is increased by two hundred seventy-six thousand dollars. The item for Mt. Olive Correctional Facility is increased by one million four hundred twenty-one thousand dollars and one million nine hundred thirty-four thousand five hundred dollars is added to a new item of appropriation for Bureau of Prisons - Federal Prison Camp for expenditure during the fiscal year two thousand two with no new money being appropriated.

CHAPTER 5

(H. B. 305 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

[Passed June 10, 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 two, to the department of agriculture - donated food fund, fund 1446, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of agriculture - donated food fund, fund 1446, fiscal year 2002, organization 1400, available
for expenditure during the fiscal year ending the thirtieth day of June, 
two thousand two; therefore

Be it enacted by the Legislature of West Virginia:

That chapter one, acts of the Legislature, first extraordinary 
session, two thousand one, known as the “Budget Bill,” be supple- 
mented and amended by adding to title II, section three thereof, the 
following:

1 TITLE II — APPROPRIATIONS.
2
3 Section 3. Appropriations from other funds.
4
5 EXECUTIVE
6 111a—Department of Agriculture—
7
8 Donated Food Fund
9 1446 FY 2002 Org 1400
10
11 Activity Other Funds
12
13 1 Unclassified - Total ............... 096 $ 1,200,000
14
15 The purpose of this supplementary appropriation bill is to 
16 supplement this account in the budget act for the fiscal year 
17 ending the thirtieth day of June, two thousand two, by providing 
18 for a new item of appropriation to be established therein to 
19 appropriate other funds in the amount of one million two 
20 hundred thousand dollars for the Donated Food Fund for 
21 expenditure during the fiscal year two thousand two.
CHAPTER 6

(H. B. 306 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 10, 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 two, to the department of agriculture, fund 8736, fiscal year 2002, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

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 two, 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 two, to fund 8736, fiscal year 2002, organization 1400, be supplemented and amended by increasing the total appropriation by one million eight hundred thousand dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.
3290 CONSOLIDATED PUBLIC RETIREMENT BOARD  [Ch. 7

EXECUTIVE

259—Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2002 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$1,800,000</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 two, by increasing the existing appropriation for unclassified - total by one million eight hundred thousand dollars for expenditure during fiscal year two thousand two.

CHAPTER 7

(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

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

AN ACT to amend and reenact sections one, two and seven, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article one, chapter five-a of said code by adding thereto a new section, designated section ten, all relating to certain benefits attendant to employment with the state and county boards of education;
clarifying that assets of the public retirement systems administered by the consolidated public retirement board are held in trust; clarifying application of certain rules under the Internal Revenue Code to contributions and benefits under the qualified retirement plans administered by the consolidated public retirement board; authorizing the board to adopt policies and procedures and take other actions to comply with Internal Revenue Code requirements; providing for investment management consulting services for the teachers’ defined contribution system; creating a public employee leave benefit analysis board; stating purpose, membership and duties of same; authorizing a study of the feasibility of instituting an employee leave benefit buy-back program; setting limit on expenditures for same; specifying mandatory factors to be considered and additional areas of study; authorizing department of administration and superintendent of state board of education to require certain data collection, etc., by spending units and county boards of education; requiring report to the Legislature by date certain; authorizing implementation of said board’s recommendations by concurrent resolution; exempting certain rules from legislative rule-making review; making technical revisions; and deleting obsolete language and provisions.

Be it enacted by the Legislature of West Virginia:

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

Chapter
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
5A. Department of Administration.
§5-10D-1. Consolidated public retirement board created; transition; members; vacancies; investment of plan funds.

(a) There is hereby continued a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten of this chapter; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b of said chapter; the West Virginia state police death, disability and retirement fund created by article two, chapter fifteen of this code; the West Virginia state police retirement system created by article two-a of said chapter; the death, disability and retirement fund for deputy sheriffs created by article fourteen-d, chapter seven of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code.

(b) The consolidated public retirement board shall begin administration of the death, disability and retirement fund for deputy sheriffs established in article fourteen-d, chapter seven of this code on the first day of July, one thousand nine hundred ninety-eight.
(c) The membership of the consolidated public retirement board consists of:

1. The governor or his or her designee;
2. The state treasurer or his or her designee;
3. The state auditor or his or her designee;
4. The secretary of the department of administration or his or her designee;
5. Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the governor, with the advice and consent of the Senate; and
6. A member, annuitant or retirant of the public employees retirement system who is or was a state employee; a member, annuitant or retirant of the public employees retirement system who is not or was not a state employee; a member, annuitant or retirant of the teachers retirement system; a member, annuitant or retirant of the West Virginia state police death, disability and retirement fund; a member, annuitant or retirant of the deputy sheriff's death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(d) The appointed members of the board shall serve five-year terms. The governor shall appoint the member representing the deputy sheriff's death, disability and retirement fund by the first day of July, one thousand nine hundred ninety-eight, to a five-year term. A member appointed pursuant to subdivision (6), subsection (c) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed
membership, the governor, within sixty days, shall fill the
vacancy by appointment for the unexpired term. No more than
five appointees shall be of the same political party.

(e) The consolidated public retirement board has all the
powers, duties, responsibilities and liabilities of the public
employees retirement system established pursuant to article ten
of this chapter; the teachers retirement system established
pursuant to article seven-a, chapter eighteen of this code; the
teachers’ defined contribution system established pursuant to
article seven-b of said chapter; the West Virginia state police
death, disability and retirement fund created pursuant to article
two, chapter fifteen of this code; the death, disability and
retirement fund for deputy sheriffs created pursuant to article
fourteen-d, chapter seven of this code; and the judges’ retire-
ment system created pursuant to article nine, chapter fifty-one
of this code and their appropriate governing boards. The
consolidated public retirement board may propose for promul-
gation all rules necessary to effectuate its powers, duties and
responsibilities pursuant to article three, chapter twenty-nine-a
of this code: Provided, That the board may adopt any or all of
the rules, previously promulgated, of a retirement system which
it administers.

(f) Effective on the first day of July, one thousand nine
hundred ninety-six, the consolidated public retirement board
shall, within two business days of receipt, transfer all funds
received by the consolidated public retirement board for the
benefit of the retirement systems within the consolidated
pension plan as defined in section three-c, article six-b, chapter
forty-four of this code, including, but not limited to, all em-
ployer and employee contributions, to the West Virginia
investment management board: Provided, That the employer
and employee contributions of the teachers’ defined contribu-
tion system, established in section three, article seven-b, chapter
eighteen of this code, and voluntary deferred compensation
funds invested by the West Virginia consolidated public retirement board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia investment management board.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The consolidated public retirement board shall be a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the consolidated public retirement board shall be a trustee with regard to the investments of the teachers' defined contribution system, the voluntary deferred compensation funds invested pursuant to section five, article ten-b of this chapter and any other assets of the public retirement plans administered by the consolidated public retirement board as set forth in subsection (a) of this section for which no trustee has been expressly designated in this code.

(h) The board may employ the West Virginia investment management board to provide investment management consulting services for the investment of funds in the teachers' defined contribution system.

§5-10D-2. Chairman and vice chairman; executive director; employees; legal advisor; actuary.

(a) The board shall elect from its own number a chairman and vice chairman.

(b) The board shall appoint an executive director of the retirement systems. The executive director shall be the chief administrative officer of all the systems and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive director shall be fixed by the board subject to the
approval of the governor. The executive director shall, with the
approval of the board of trustees, employ such administrative,
technical and clerical employees as are required in the proper
operation of the systems.

(c) Notwithstanding the provisions of section two, article
three of this chapter, the board shall employ and be represented
by an attorney licensed to practice law in the state of West
Virginia who is not a member of any of the retirement systems
administered by the board.

(d) An actuary, employed by the state or the board pursuant
to section four of this article, shall be the actuarial consultant to
the board.

(e) Prior to the first day of July, one thousand nine hundred
ninety-one, the expenses of the board for the administration of
the teachers' defined contribution retirement system created
pursuant to article seven-b, chapter eighteen of this code shall
be paid by the teachers retirement system created pursuant to
article seven-a of said chapter.

§5-10D-7. Compensation limitations; effective dates.

(a) Effective for plan years beginning after the thirty-first
day of December, one thousand nine hundred ninety-five, the
annual compensation of a participant taken into account in
determining benefits or contributions under any of the public
retirement plans administered by the board and which are
qualified plans under Section 401(a)(17) of the Internal
Revenue Code may not exceed one hundred fifty thousand
dollars, as indexed in accordance with the provisions of Section
401(a)(17) of the Internal Revenue Code. This provision shall
apply notwithstanding any other provision to the contrary in
this code and notwithstanding any provisions of any legislative
rule.
(b) In applying the limitations of subsection (a) of this section, the consolidated public retirement board is authorized to: (1) Adopt policies or procedures that may be necessary or appropriate in applying the compensation limitations of Section 401(a)(17) to participants, including, without limitation, the adoption and application of any transitional rules to implement the compensation limitations; and (2) to take any actions that may at any time be required by the internal revenue service regarding compliance with the requirements of Section 401(a)(17), including, without limitation, distributions, credits, set-asides or other adjustments.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-10. Public employee leave benefit analysis board created; purpose; leave benefit buy-back study authorized; factors to be considered; and report to the Legislature.

(a) There is hereby created a public employee leave benefit analysis board. The initial and primary purpose of the board is to analyze the fiscal impact on the state, and on the several county boards of education whose employees participate in the public employees insurance agency plan, the ability of participating employees upon retirement to convert accrued annual and sick leave benefits for extended insurance coverage through the public employees insurance agency or for enhanced retirement benefits pursuant to section thirteen, article sixteen, chapter five of this code. The board shall determine the feasibility of instituting a voluntary leave benefit buy-back program under which employers would pay participating employees to buy back their accrued leave benefits. The board shall focus first on employees subject to subsection (c), section thirteen, article sixteen, chapter five of this code. If the board determines such a program would be feasible and cost effective,
in comparison to the projected costs of continuing to maintain the conversion of accrued leave for extended insurance cover-
age and/or enhanced retirement benefits, the board shall also develop rules for the implementation and administration of such a buy-back program. The board shall complete its analysis and report its findings and recommendations with regard to this subject to the Legislature on or before the first day of September, two thousand one. If, upon receipt of such report, the Legislature determines that the buy-back program should be implemented, it shall adopt the report of the board by concur-
rent resolution and no further action of the Legislature shall be required to authorize implementation of the board’s recommend-
dations.

(b) The board created in this section shall consist of five voting members as follows: The secretary of the department of administration, who shall serve as its chair; the executive director of the consolidated public retirement board; the director of the public employees insurance agency; the director of the division of personnel; and the state superintendent of schools or the superintendent’s designee. Four members of the Legislature, two appointed by the president of the Senate and two appointed by the speaker of the House of Delegates, shall also serve as nonvoting members, ex officio. It shall meet upon the call of the chair and a simple majority of the members shall constitute a quorum for the transaction of business.

(c) The expenses incurred by the board in studying the feasibility of a voluntary buy-back program and developing rules for implementation, if any, may not exceed one hundred thousand dollars and shall be paid out of funds appropriated therefor by the Legislature to the department of administration.

(d) The board’s analysis of a voluntary leave benefit buy-back program shall be based upon an appropriate actuarial
study, as determined by the board, and shall include at a
minimum the following:

(1) A full cost/benefit analysis which takes into account the
costs for the current sick and annual leave conversion for the
premium offset for extended insurance coverage as well as for
enhanced retirement benefits and projections for future costs
associated with such leave benefit conversion, stated in terms
of present value and as amortized over an appropriate period, as
determined by the board. This analysis shall also take into
account the ways in which the leave conversion programs affect
employees' use of sick and annual leave benefits during active
employment, as well as upon retirement;

(2) The analysis shall be based on detailed actuarial
assumptions in order to assure that cost projections are as
accurate as possible: Assumptions shall be developed using data
provided by the public employees insurance agency, the
division of personnel and the consolidated public retirement
board and shall be based on individual employee and partici-
pant data rather than summary data; actual experience for
employees and retirees shall be considered, as well as an
actuarially appropriate range of assumptions for projecting
future costs; all calculations of future costs shall take into
account projected increases in medical and prescription drug
costs; and all assumptions used for any calculation shall be
clearly stated, along with their basis;

(3) In order to be considered feasible or cost effective, the
leave benefit buy-back program must assure a monetary savings
to the state, in comparison to maintaining the conversion of
leave benefits upon retirement;

(4) Any leave benefit buy-back program shall be based on
the voluntary participation of affected employees;
(5) The design of any leave benefit buy-back program shall anticipate payroll tax implications for public employers, in addition to taking into consideration possible tax implications for employees who might choose to participate;

(6) The design of any leave benefit buy-back program shall provide that if employee demand exceeds revenues appropriated by the Legislature for the program in any fiscal year, eligibility for participation shall be based on seniority, as measured by total years or parts thereof of credited service with a participating employer;

(7) The design of any leave benefit buy-back program shall provide that any employee who elects to participate may not thereafter file an employee grievance or maintain a civil action relating to participation in the program or the benefits derived therefrom; and

(8) The design of any leave benefit buy-back program shall presume limitations on the future accrual of leave benefits which may be converted for extended insurance coverage or enhanced retirement benefits by employees who elect to participate in the program.

(e) Any rule developed by the board for implementing or administering a leave benefit buy-back program as provided in this section, including the rate of exchange to be offered to employees who elect to participate, shall be considered interpretative or procedural in nature and is not subject to rule-making review by the Legislature, as provided in chapter twenty-nine-a of this code.

(f) In addition to the factors to be included in the analysis of a leave benefit buy-back program enumerated above, the board created in this section shall also consider the salient issues surrounding the provision of long-term disability insurance coverage in lieu of certain benefits currently pro-
vided, retirement disability and employee donation of leave
benefits, as authorized by section twenty-seven, article six,
chapter twenty-nine of this code, including the potential cost
and benefit thereof relative to the total benefit/compensation
package made available to state employees and employees of
county boards of education.

(g) In furtherance of the board’s purposes as stated in this
section, the department of administration is hereby authorized
to require all state spending units to collect, compile, maintain
and report data regarding employee sick and annual leave use,
balances, accrual and conversion. The superintendent of the
state board of education is hereby granted the same authority
with respect to the several county boards of education.

(h) It is the intention of the Legislature that the provisions
of this section shall supersede and govern any other provision
of this code or legislative rule to the contrary.

CHAPTER 8

(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)

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

AN ACT to amend and reenact section nine-a, article one, chapter
fifty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to increasing the number of
magistrate court deputy clerks authorized for appointment to
office.

Be it enacted by the Legislature of West Virginia:
That section nine-a, 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.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

(a) Whenever required by workload and upon the recommendation of 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, the supreme court of appeals may, by rule, provide for the appointment of magistrate court deputy clerks, not to exceed sixty-two in number. The magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge if there is more than one judge of the circuit court, to serve at his or her will and pleasure under the immediate supervision of the magistrate court clerk.

(b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court or the chief judge if there is more than one judge of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

(c) A magistrate court deputy clerk may not be an immediate family member of any magistrate, magistrate court clerk, magistrate assistant or judge of the circuit court within the same county, may not have been convicted of a felony or any misdemeanor involving moral turpitude and must reside in this state. For purposes of this subsection, “immediate family member” means a mother, father, sister, brother, child or spouse.

(d) Magistrate court deputy clerks shall be paid a monthly salary by the state on the same basis and in the same amounts established for magistrate assistants in each county, as provided in section nine of this article.
AN ACT to amend and reenact article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-b, relating to providing that for purposes of certain general salary increases for state employees, the term “state employees” does not include those state employees who are employed within the higher education system of the state or within the judicial or legislative branches of the government of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18b. Definition of term “state employees”.

1 As used in subsection (b), section eighteen-a of this article, the term “state employees” does not include those state employees who are employed within the higher education system of the state or within the judicial or legislative branches of the government of this state.
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 two, in the amount of one million dollars from the division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313.

WHEREAS, The Legislature finds that the account balance in the division of environmental protection - mining and reclamation
operations fund, fund 3324, fiscal year 2002, organization 0313 exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds from the division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, be decreased by expiring the amount of one million dollars to the unappropriated surplus balance of the state fund, general revenue, to be available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two.

8. The purpose of this bill is to expire the sum of one million dollars from the division of environmental protection - mining and reclamation operations fund, fund 3324, fiscal year 2002, organization 0313, to the unappropriated surplus 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.

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CHAPTER 2

(H. B. 402 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed August 8, 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 two, in the amount of thirty million one hundred sixty-two thousand dollars from the revenue shortfall
reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand two, to the governor's office, civil contingent fund, fund 0105, fiscal year 2002, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue dated August 8, 2001, setting forth therein the cash balance and investments as of July 1, 2001, and further included the estimate of revenues for fiscal year 2002, less net appropriation balances forwarded and regular appropriations for fiscal year 2002; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand two; and

WHEREAS, By the provision of the statement of the state fund, general revenue and 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 two; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of thirty million one hundred sixty-two thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of
June, two thousand two, to fund 0105, fiscal year 2002, organization 0100, be supplemented and amended by increasing the total appropriation by forty-two million two hundred twenty-two thousand eight hundred fifty dollars as follows:

1  TITLE II — APPROPRIATIONS

2  Section 1. Appropriations from general revenue.

3     8—Governor’s Office—

4  Civil Contingent Fund

5  (WV Code Chapter 5)

6  Fund 0105 FY 2002 Org 0100

7  

8  Activity    Revenue

9  General    Fund

10  1  Civil Contingent Fund - Total

11  Surplus (R) ................. 238  $ 42,222,850

12  The purpose of this bill is to expire the sum of thirty million one hundred sixty-two thousand dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor’s office, civil contingent fund, fund 0105, fiscal year 2002, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding forty-two million two hundred twenty-two thousand eight hundred fifty dollars to the appropriation for civil contingent fund - total - surplus for expenditure during the fiscal year two thousand two.
AN ACT making a supplementary appropriation of lottery net profits from the balance of moneys remaining as an unappropriated balance in lottery net profits, to the department of education and the arts - office of the secretary - control account - lottery education fund, fund 3508, fiscal year 2002, organization 0431; West Virginia development office - division of tourism, fund 3067, fiscal year 2002, organization 0304; and bureau of senior services, fund 5405, fiscal year 2002, organization 0508, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand two.

WHEREAS, The governor submitted to the Legislature a statement of the lottery net profits, dated August 8, 2001, setting forth therein the cash balance as of July 1, 2001, and further included the estimate of revenues for the fiscal year 2002, less regular appropriations for the fiscal year 2002; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand two; 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 two, to fund 3508, fiscal year 2002, organization 0431, be supplemented and amended by increasing the total appropriation by six hundred eighty-seven thousand five hundred dollars as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 4. Appropriations from lottery net profits.

3 241—Department of Education and the Arts—

4 Office of the Secretary—

5 Control Account—

6 Lottery Education Fund

7 (WV Code Chapter 5F)

8 Fund 3508 FY 2002 Org 0431

9 14a Activity Lottery Funds

10 11 Flood Reparations .............. 400 $ 687,500

12 And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 3067, fiscal year 2002, organization 0304, be supplemented and amended by increasing the total appropriation by eighty-nine thousand six hundred fifty dollars as follows:

17 TITLE II — APPROPRIATIONS.

18 Section 4. Appropriations from lottery net profits.

19 237—West Virginia Development Office—
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And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand two, to fund 5405, fiscal year 2002, organization 0508, be supplemented and amended by increasing the total appropriation by ninety thousand dollars as follows:

**TITLE II — APPROPRIATIONS.**

**Section 4. Appropriations from lottery net profits.**

**246—Bureau of Senior Services**

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The purpose of this supplementary appropriation bill is to supplement the aforementioned accounts in the budget act for the fiscal year ending the thirtieth day of June, two thousand two, by adding a new item of appropriation for flood reparations in the amount of six hundred eighty-seven thousand five hundred dollars to the department of education and the arts -
office of the secretary - control account - lottery education fund, and by adding a new item of appropriation for flood reparations in the amount of eighty-nine thousand six hundred fifty dollars to the West Virginia development office - division of tourism, and by adding a new item of appropriation for flood reparations in the amount of ninety thousand dollars to the bureau of senior services for expenditure during the fiscal year two thousand two.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2001

HOUSE BILLS

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**Regular Session, 2001**

**HOUSE BILLS**

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DISPOSITION OF BILLS ENACTED

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**Regular Session, 2001**

**SENATE BILLS**

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Second Extraordinary Session, 2000

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*First Extraordinary Session, 2001*

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**Third Extraordinary Session, 2001**

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